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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of mercies, whose unfailing love and faithfulness cover our sins, make us today instruments of Your grace. Give us the wisdom to think before speaking and to say the right thing at the right time. May our actions so please You that even our enemies will live at peace with us.

Guide our lawmakers in their challenging work. Remind them that many counselors bring success. Help them also to remember that they can make plans but You determine their steps. Teach us all that it is better to be patient than powerful, and it is better to have self-control than to conquer a city. Guide us by Your light that we may reach the light that never fades.

We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance as follows:

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

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

Mr. REID. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we will have a 1-hour period for morning business, which will follow the remarks of the two leaders. After morning business, the Senate will begin consideration of the pension security bill under the time agreement which was reached last night. Under that order, there will be 2 hours of general debate on the bill and substitute, with two additional amendments in order limited to 30 minutes each. We will finish that bill today with probably three rollcall votes. We will also vote on the adoption of the conference report to accompany the Commerce-Justice-Science appropriations bill that was debated yesterday. The vote on final passage will be stacked with the pension votes that we will have a little bit later this morning.

In addition, yesterday the Finance Committee reported the tax increase prevention bill. That is the tax reconciliation bill, and we will begin that measure today as well. Hopefully, we will be able to get to that bill as soon as possible in order to begin the clock running on the 20-hour statutory time agreement and, hopefully, we will be able to facilitate a very busy schedule this week by beginning that tax measure early this afternoon and using some of that time to get the clock started.

In addition, we have conference reports that will be coming over from the other side. We will continue to consider any of those available conference reports as they arrive from the House. I will be back to the floor to update Members on the schedule for the remainder of the week as these conference reports become available.

As I have mentioned, we have a lot of business to do today. Although we have made huge progress over the course of yesterday, much of which is seen on the floor, and we had a very successful day, there is much of which people do not see that is occurring in these conferences that are ongoing. We do have a lot to do. I know there are a lot of Members who are asking about their schedules, whether we will be out Friday, Saturday, Sunday, Monday, or Tuesday. Again, things are coming along nicely to be out at a reasonable time, but a lot depends on how efficiently we can work together. I am pleased with the progress that has been made over the last 48 hours.

ASBESTOS LITIGATION REFORM

Mr. FRIST. Mr. President, I have been working with my colleagues for 3 years to reform our asbestos litigation system. It is a system that today is unfair and unjust. Because of that, people suffer, jobs are lost, and bankruptcies occur. The day has come for us to fix it.

I am pleased to inform my colleagues that asbestos reform will be the first major legislation that we consider in late January when we return. In January, asbestos reform will be the first major legislation that we consider.

I commend my friend, Senator SPECTER, chairman of the Judiciary Committee. Rarely a day goes by that we

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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have a conversation that he does not mention the importance of this bill that he, working with the ranking member, Senator LEAHY, has spent so much time and focus on. I commend them for those tireless efforts to forge a bipartisan—and we do not hear that word very much around here—consensus.

I had hoped that the Senate would be able to bring the legislation to the floor some time in the last several weeks or months and that we could debate it and pass asbestos litigation reform this year. Unfortunately, as we all know, there have been a number of circumstances, with Katrina, the fact that we have indeed taken each of the appropriations bills across the floor individually, the Supreme Court nominations, all of which have slowed down our work on asbestos in terms of bringing it to the floor.

Now that wait is over. No more delay. After 4 hearings—10 including markups—2 years of intense negotiations, the Senate will finally resolve the asbestos litigation crisis that currently is clogging our Nation's courtrooms and threatening America's economic health. There is wide agreement that the current asbestos litigation system is disastrous. It is disastrous for everybody. It is disastrous for victims who suffer from asbestosis or mesothelioma. It is disastrous for an ever-widening circle of companies that it bankrupts. It is disastrous for the tens of thousands of jobs that are lost, and it is disastrous ultimately for the American people.

More than 700,000 individuals have filed claims with at least 8,400 defendant companies. More than 300,000 claims are currently pending. More than $70 billion has already been spent trying to resolve these claims that have bankrupted nearly 80 companies. It is time to fix the system. The system is out of control. It is time for commonsense reform.

According to the 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 jobs and $200 million in lost wages. That is wrong. Employees' retirement funds have shrunk by 25 percent. Meanwhile, the sickest victims of asbestos exposure are not getting their efficient compensation or their fair compensation. Instead, they are waiting in line behind thousands of claimants who are themselves unimpaired.

A recent RAND study put the number of unimpaired claimants at 60 percent—6–0 percent. Even if after years of waiting and an ill claimant finally does get a court settlement, that award is whittled down, gets smaller and smaller because of lawyer's fees and other expenses until it is less than half of the original sum that was awarded. It is too little too late for far too many people.

We do have a solution, and we will bring that to the floor. The $140 billion fund that is on the table will ensure that victims receive proper compensation without delay. Unlike the tort system, the $140 billion trust fund—and this is not taxpayer money—will provide certainty and fair relief. The money will go to the victims instead of to the trial lawyers.

Mesothelioma, just to give an example, is a devastating disease. In the mid-1980s I spent almost a year in England operating, doing thoracic surgery, chest surgery, lung surgery, at South Hampton Hospital in South Hampton, England. It was not unusual to see mesothelioma, which is an asbestos-related disease that encases the lung with thick fibrous plaques which restrict the expansion of the lung, and people end up suffocating to death.

Under this bill, a victim suffering from mesothelioma will get $1.1 million within months to help pay for medical expenses and the suffering. It will not be delayed 6 months, 1 year, or 2 years. The entire $1.1 million will go to the victim instead of half of it going to a system that is out of control.

A person suffering from asbestosis, which is a manifestation of asbestos exposure, will receive as much as $850,000 under this bill. The fund provides significant compensation because we recognize that these are serious illnesses. These are dire illnesses that can be caused by asbestos exposure. They are life threatening and life altering and the victims deserve that fair, just, and timely compensation which they are not getting today.

I commend both Chairman SPECTER, Senator LEAHY, and all of my colleagues on the Judiciary Committee for tackling asbestos reform. Again, we will bring that to the floor in late January. The committee is holding a hearing on asbestos on Thursday, tomorrow. I applaud them for moving forward on this bill to help people understand what is at stake.

I call upon my colleagues to work directly with Senator SPECTER and Senator LEAHY over the next few weeks so that this bill can be considered and approved expeditiously in January. I know there is bipartisan support for S. 852 in this Chamber. I understand that it will involve debate and amendment, and that is appropriate. Yet I am confident that by pulling together we can pass S. 852 and put the asbestos crisis where it belongs, and that is behind us.

I look forward to getting this done, and I look forward to continuing to deliver meaningful solutions to the American people.

I yield the floor.

The PRESIDENT pro tempore. The Democratic leader is recognized.

THE NOMINATION OF JUDGE ALITO

Mr. REID. Mr. President, 2 weeks ago the President nominated Judge Samuel A. Alito to serve on the Supreme Court of the United States. I congratulate Judge Alito on this high honor. I pledge that the Senate Democrats will help ensure a thorough and dignified confirmation process. While I approach the confirmation process with an open mind, even at this early stage I have a number of significant concerns I want to share with my colleagues.

First, the President's selection of Judge Alito was not at all the product of consultation with Senate Democrats, as envisioned by the Founding Fathers. On two prior occasions President Bush spoke with me. He invited Senator LEAHY and me to the White House to discuss the future of the Supreme Court. The President listened seriously to our views and appeared to understand that the job of filling judicial vacancies is a constitutional responsibility that he shares with the Senate.

But this time, instead of an invitation to the White House, I received nothing more than a pro forma telephone call from the President's Chief of Staff, telling me he had selected Judge Alito about an hour before he announced the nomination. In fact, the President did consult about the Alito nomination but with the wrong people. It wasn't with me and it wasn't with Senator LEAHY. According to widely recognized press reports, the White House consulted with conservative activists to make sure the President would not disappoint them with his selection. I think the term conservative activists is probably very broad, too broad; with some extremes—extreme on the right wing. Some of these extreme Web sites received word of the Alito nomination before any Senate Democrat was even consulted or informed.

Consultation is not just a courtesy; it is a way for the President to ensure that a candidate for a lifetime appointment to the Supreme Court receives broad bipartisan support in Congress. That was what our Founding Fathers talked about. That is why that provision is in the Constitution. The constitutional design commands a partnership in this endeavor, not mere notification of the coequal branch of Government.

The second reason I have early concerns about this nomination is that it represents an abandonment of the principle that the Supreme Court should be comprised of highly qualified individuals with diverse backgrounds, experiences, and heritages. It is so striking that President Bush has chosen a man to replace Justice Sandra Day O'Connor, the first of only two women ever appointed to the Supreme Court. Today, unlike 24 years ago, when Sandra Day O'Connor herself was nominated, more than half of the Nation's law students are women. There are countless qualified women on the bench, in elective office, in law firms, and serving as law school deans and law professors. I cannot believe the President searched this country and was unable to find a qualified female nominee. But maybe he was unable to find a qualified female nominee who happened to satisfy the extreme right wing of the Republican Party.

Meanwhile, for the third time the President has turned down the opportunity to make history by nominating the first Hispanic to the Supreme Court. How much longer must Hispanics wait before they see someone on the Nation's highest Court who shares their ethnic heritage and their shared experiences?

At the same time, the appointment of Judge Alito largely fails to diversify the Court in terms of professional experience. Judge Alito is a long-serving Federal appellate judge who would join eight other justices with that very same professional credential. While his prior service as a Federal prosecutor is commendable and worthwhile, he was essentially an appellate lawyer like a number of the sitting justices.

We have come a long way from the days when Senators, bar leaders, trial lawyers, leading professors and others with a wide range of life experiences were routinely appointed to the Supreme Court. If Judge Alito is confirmed, the range of professional diversity on the Court will extend all the way from those who served on the D.C. Circuit to those who served on the First, Third, Seventh, or Ninth Circuit before their promotions.

The third and most important basis for my early concern about the Alito nomination is the fact that he was nominated following the forced withdrawal of White House Counsel Harriet Miers. Harriet Miers received a raw deal from her critics. This woman had been the managing partner of a major American law firm, the first female president of the Dallas Bar Association—which, by the way, is larger than most State bar associations. She was the first female president of the Texas Bar Association. She had been one of the Nation's leaders in promoting opportunities for women lawyers and minority lawyers. She has been a champion of ensuring legal representation for the poor. She was a trial lawyer. The one-dimensional portrait her opponents painted of her was malicious and unfair.

Let's not sugarcoat the truth. The nomination of Harriet Miers was derailed by the overwhelming opposition of the extreme right wing. They campaigned against her, they ran paid advertising against her, and they finally succeeded in having the President cave in to these radical right wing activists. They succeeded in defeating her nomination even before this fine woman was afforded an opportunity to make her case to the Senate Judiciary Committee.

Earlier this year we heard Senator after Senator on the other side of the aisle, and conservative commentators across the airwaves, declare that every judicial nominee is entitled to an up-or-down vote. I have a question for those Senators, those commentators: When exactly will Harriet Miers receive her up-or-down vote?

The White House made a half-hearted effort to argue that the Miers nomination was withdrawn in the face of an impasse over what documents would be provided to the Senate. That is a pretext, a laughable cover story.

She was forced to withdraw by conservative activists who want to change the legal landscape of America. They decided she was inadequately radical or insufficiently aggressive for their purposes, so they gave her the boot. You don't have to take my word for it. Listen to the words of John Danforth, our former colleague, Senator from Missouri and, until recently, President Bush's Ambassador to the United Nations. He was asked on CNN recently who he thought were the winners in the Miers episode. I quote his answer:

> The big winner is the right wing of American politics. They have scored a big victory. This was a power play on their part. And they won it . . . they took on Harriet Miers for no explainable reason. It was really an outrage, in my opinion, that this happened.

Senator Danforth is himself a pro-life Republican and an ordained Episcopal priest, but listen to what he says about his fellow Republicans:

> I am very concerned about the ascendancy of the political right, particularly in the Republican Party. It's very obvious that nobody can do enough to please them. The President certainly can't. . . . They gave him a kick in the teeth. I think [the Republican Party has] been taken over by people I feel uncomfortable with and a lot of Republicans feel uncomfortable with . . . They want a political judge. They want a judicial activist.

Senator Danforth has revealed an important truth about today's Republican Party. His warnings are precisely why the Senate needs to take a long, hard look at the Alito nomination.

Even in the first 2 weeks of the confirmation process, a picture of Sam Alito is emerging that may explain why the extreme right wing is popping champagne corks. Earlier this week we learned of the 1985 memo in which Alito said, ''I am, and always have been a conservative.'' He also spoke proudly of his work on behalf of an extremely conservative agenda of the Reagan Justice Department.

We don't have to guess whether Judge Alito's description of himself in that memo would predict what kind of a judge he would be. For the past 15 years, Judge Alito has been one of the most conservative judges in the country—some would say extreme. For example, in civil rights cases he has often dissented to argue for higher barriers to recovery for people with claims of discrimination. In Bray v. Marriott Hotels, his colleagues said Title VII of the Civil Rights Act ''would be eviscerated'' if Judge Alito's approach were followed. In Nathanson v. Medical College of Pennsylvania, he dissented in a disability rights case where the majority said, ''few if any Rehabilitation Cases would survive'' if Judge Alito's views were the law. And in Sheridan v. DuPont, he was the only one of 11 judges on the court who would apply a higher standard of proof in sex discrimination cases.

In another area of law, Judge Alito has been quick to limit the authority of Congress, even when it is working to help people solve real problems. In Chittester v. Department of Community Development, he held that the Constitution did not allow a State employee to enforce the Family and Medical Leave Act. The Supreme Court effectively repudiated that view 3 years later in the Hibbs case from my own State of Nevada.

These are a few of Judge Alito's many judicial opinions which merit close review by the Senate. By all accounts, Sam Alito is a decent man, well liked by his colleagues. He has devoted his entire legal career to public service, and for that I admire him. Throughout the confirmation process I will work to ensure that Judge Alito is treated with civility and respect. But there is nothing disrespectful about an open and fair-minded review of a nominee's approach to the Constitution and his commitment to the core American values such as equality, privacy, fairness.

One final point. This nomination will be governed by the 200-year-old rules of the Senate. I was very dismayed to read an essay by the majority leader in the Chicago Tribune last week in which he threatened to change the rules of the Senate to ensure that Judge Alito would be confirmed. Think about that. My friend, the majority leader, wrote:

> If members of the Democratic minority persist in blocking a vote on Alito's nomination, the Senate will have no choice but to change the rules.

The majority leader's accusation is baseless. Democrats can hardly persist in an activity in which we are not engaged. No Democrat has even raised the issue of extended debate. At this early stage of the process, 2 months before committee hearings on this nomination will begin, it is silly to argue about the terms of floor debate. Earlier this year, the entire Senate breathed a sigh of relief when the so-called ''nuclear option'' was averted by an agreement of a bipartisan group of Senators. We don't know what is going to happen on this nomination. The majority leader should put his sword back in its sheath and let the Senate move forward on this nomination without idle threats. Let's not talk about changing the Senate rules illegally. Let's not start talking about blaming the Democrats for something in which they are not engaged.

I am confident the Senate Judiciary Committee, under the able leadership of the senior Senators from Pennsylvania and Vermont, will do a good job of illuminating Judge Alito's record and views. The rest of the Senate and the rest of our Nation will pay close attention.

THE ASBESTOS BILL

Mr. REID. Mr. President, I want to comment briefly on the statement of the distinguished majority leader this morning that the first piece of legislation we will consider in January 2006, after we return from the winter recess, will be the asbestos bill. What a mistake. I know Senator SPECTER has worked hard on this issue. In fact, Senator SPECTER and his good friend and former school roommate Judge Becker, a judge from Pennsylvania, have worked together on this bill for countless hours. However, whatever that personal relationship and despite how long and hard they may have worked on this bill, is not acceptable in its current form. It is not even close.

All you have to do is look at a bipartisan letter that was sent to Senators FRIST and this Senator, Senator REID, two days ago, dated November 14, 2006. The letter was sent by both the chairman of the Budget Committee, JUDD GREGG of New Hampshire, and the ranking member, KENT CONRAD from North Dakota, and stresses that this asbestos bill is not ready for floor action.

They write:

> . . . we are in the process of gathering data and evaluating available studies in order to provide Senate Members a better understanding of the likely budgetary implication of S. 852. . . .
>
> There are potentially serious costs to Federal taxpayers in this legislation. S. 852 would create a national trust fund to compensate victims of asbestos exposures in lieu of those victims pursuing compensation through the tort system. The legislation was reported by the Senate Judiciary Committee on May 26, 2005. There remain, however, major unresolved questions about the budgetary impact of this bill. These include: the actual cost of the program; whether proposed funding will be sufficient to compensate all claims; clarity on the allocation of assessments to business and insurance entities, including the balance of those assessments and whether these assessments will generate adequate revenues to satisfy the program's costs; the amount that will be borrowed from the Federal Government under the bill's Federal borrowing authority. The legislation proposes a fund of $140 billion. CBO has advised that this amount could be sufficient to satisfy the program's claims and costs. CBO also cautioned, however that this amount could be insufficient, depending on a number of issues. . . .
>
> Following the release of the CBO report, the Bates White economic consulting firm released a study demonstrating the fund could experience additional costs beyond the proposed amount between $161 billion and $421 billion.

Mr. President, $421 billion in additional costs. The letter concludes:

> Because of the major adverse impact the legislation could have on the Federal budget deficit if there are funding shortfalls, we ask that at least until these issues are fully resolved, that the Senate not take any further action on the legislation.

Mr. President, this bill is not ripe for floor debate and will not be in January. This bill does not adequately address the needs of the dying victims who cannot wait for this trust fund to be established. The bill doesn't address the needs of victims if the trust fund runs out of money, which it clearly seems destined to do. The bill provides special benefits for victims at one asbestos site but ignores the needs of victims at another site. In another letter to Senators FRIST and this Senator, Senator REID, dated yesterday, November 15, 2005, from the Asbestos Victims Groups United, the victims write:

> . . . [W]e write to express our continued and unified opposition to S. 852. We strongly believe that the bill is unfair to victims and is unworkable. . . . We believe it would be wholly irresponsible for Congress to proceed with consideration and passage of this legislation without accurate and complete information concerning the funding issue and the critical factors associated with it. Please do not allow the families who have lost so much to be victimized again.

This legislation will victimize asbestos victims and it will drive American companies out of business. I had a meeting not long ago with the only company in America that still makes wire. They said if this bill goes into effect they will go into bankruptcy. They are able to handle the situation now, but this bill demands that they contribute to a fund for which they have no responsibility. They are willing to take their lumps in the business world as they know them, but they will not be able to sustain themselves if they are told they have to contribute huge amounts of money to this fund.

Another company representative I have met said they spend $1 million a year on asbestos litigation, but if this bill goes into effect, they will go bankrupt because they can't afford the contributions they will be called on to make.

Let us not rush into asbestos legislation. Let us not do it fast; let us do it right. We owe it to the American taxpayers, to our American businesses and we certainly owe it to our asbestos victims to take the time to get it right.

The PRESIDING OFFICER (Mr. VITTER). The Senator from North Carolina is recognized.

Mr. REID. Mr. President, if I could, I am confident the Chair recognizes that I used leader time for my statement.

The PRESIDING OFFICER. The Senator is correct. The Chair is aware of that.

Mr. SCHUMER. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from North Carolina has the floor. She can yield time.

Mr. SCHUMER. I want to ask a question so I can establish the floor order.

The PRESIDING OFFICER. The next 30 minutes is controlled by the majority, followed by 30 minutes controlled by the minority.

The Senator from North Carolina.

CONTINUED PROGRESS IN IRAQ

Mrs. DOLE. Mr. President, we are today at war—in Iraq, Afghanistan, and so many other places in the world, with an enemy who knows no borders. The recent bombings in Amman, Jordan during a wedding celebration are a strong reminder that terrorists know no limits to their ambitions and the means by which they would achieve those ambitions, however violent and horrific.

Our dedicated American service men and women have answered a noble calling to defeat terrorism, taking the fight to the terrorists abroad, so that we do not have to fight them here at home. The central battleground in the war on terror is Iraq. It has been just 3 years since Iraq was liberated from the brutal regime of an evil dictator, and in that time, we have made tremendous progress. A constitutional democracy is taking hold, and the Middle East is moving towards greater stability. It is integral to the continued progress in this region and to the overall war on terror that we not allow the cowardly acts of insurgents to derail our efforts. America must stand firm with the Iraqis and see that this danger is defeated and freedom prevails.

Last January, the world watched as Iraqis voted for a new government. Rejecting intimidation and embracing the foundations of freedom, 8.5 million Iraqis went to the polls to vote in a free national election. Just last month, Iraqis returned to the polls once again for a referendum on a new constitution. This time, we saw significantly fewer insurgent attacks, with nearly 9.8 million Iraqis voting, and 79 percent supporting the approval of the new constitution. Iraqis have shown great courage by participating in the democratic process. They have walked for miles to the polls, stood in line for hours, and literally put their lives on the line to cast a vote for peace. Eighty-three-year-old Qadir Abdullah, seen here, made his way to the polls—on crutches. He said, ''I wish I were young. This is the first time in my life that I've voted freely in Iraq. When I was young, there were always wars and misery.'' After decades of tragedy, there is a new optimism, as shown by the willingness of Iraqis to step forward and vote for a brighter future. And the success of the referendum indeed is a powerful milestone on Iraq's road to democracy.

In another sign of progress toward democracy, the Sunnis, who in large measure refused to even participate in the January elections, turned out in great numbers to vote in the constitutional referendum, exercising their right to engage in the democratic process. And in recent weeks, three major Sunni political groups have united to participate in the December 15 elections, in which Iraqis will elect a new national assembly to pass legislation and implement the constitution.

And Iraq has seen tremendous progress toward freedom in the new public services, infrastructure, free press, economic activity, and legal institutions that are critical to the longterm success of this democracy.

Over 3,400 public schools have been built; Hundreds of water and sewage projects, 149 new health facilities, and over 250 fire and police stations have been completed.

Before the war, Iraq's media was tightly controlled by Saddam Hussein's propaganda machine. The country had no commercial TV or radio stations, and no independent newspapers or magazines. Today, Iraq has a thriving, competitive, free press, with 44 commercial TV stations, 72 commercial radio stations, and more than 100 independent newspapers and magazines. Iraqis can now make up their own minds, based on varying viewpoints in a marketplace of ideas, about the future of their new democracy.

And another foundation of freedom is taking hold—Iraq is experiencing the beginnings of a competitive financial market, with a modernized Iraqi stock exchange.

And Iraqis are for the first time experiencing the rule of law at work in their legal system, with an independent judiciary free to judge cases on their merits, not under the orders of Saddam Hussein and his henchmen.

Ever more, Iraqis are seeing the insurgents for the thugs, thieves, and indiscriminate killers that they are. In just the past nine months, there has been an astonishing 500 percent increase in the number of tips regarding insurgents that Iraqi civilians are providing to security forces.

Iraq is the central battleground in the war on terror. And yet despite the evident progress, some want to cut and run. They claim that our troops have simply done all that they can do, and that the United States should set arbitrary timelines for withdrawing our forces. Mr. President, I strongly disagree and believe that setting such a timeline would only embolden the terrorists and send the message that the United States has lost its resolve in the war on terror. This is the wrong message. Any timeline for withdrawal must be driven by success—not artificially tied to a calendar.

This is not the first time in our history when cynics and skeptics have balked in the face of landmark challenges. A few years may have passed since I had the pleasure of serving President Ronald Reagan in his Cabinet, but I can still remember the naysayers attacking him for his fixed resolve in fighting the cold war. They questioned President Reagan's reasoning, they questioned his strategy, and they questioned America's chances of coming away victorious in a battle to free Russia and other countries from the grasp of communism. President Reagan rejected communism, he rejected the iron curtain, and he refused to concede that freedom would not prevail. While the Soviet Union was extending its influence and doctrine throughout the world, President Reagan, in the face of severe criticism, pursued a different vision. He knew that the enemy must be defeated, not tolerated. We now know he was right in his actions to bring an end to communism—millions were freed and that global threat no longer exists.

Today, naysayers are at it again. Their droning doubt is all too familiar. Much of this defeatist criticism is being leveled by the very same people who, having access to the same intelligence as the president, agreed that Iraq posed a real and immediate threat. And these very same people supported going into Iraq to fight the war on terror. Now they want to throw up their hands and walk away before the job is done.

No one ever said this would be easy, and mistakes have certainly been made. This is a war—and it is painful and horrific. Every life lost is one tragic loss too many. But we must ensure that their sacrifice was not in vain.

We must honor our fallen heroes, heroes like Major Jeffrey Toczylowski, by completing the job they set out to do. Major Toczylowski, seen here, was a Special Forces detachment commander assigned to the 10th Special Forces Group. Two weeks ago in Anbar province, he made the ultimate sacrifice for his country. In his last email home to his family and friends, he wrote how they should respond if he were to lose his life in battle: And I quote:

> Don't ever think that you are defending me by slamming the global war on terrorism or the U.S. goals in that war. As far as I am concerned, we can send guys like me to go after them, or we can wait for them, to come back to us again. I died, doing something I believed in and have no regrets, except that I couldn't do more.

What a powerful testament to the commitment of our service members fighting the war on terror.

Just yesterday, we debated an amendment to the Defense authorization bill that would have forced the administration to set an arbitrary date for the withdrawal of U.S. troops. I am pleased the Senate rejected this proposal. The Frist-Warner amendment we accepted—79–19—sent a message—a forward-looking message—that we expect the Iraqis to continue their progress—and the Congress, in its oversight, will continue to receive reports on the progress being made. The timeline we should focus on is December 15 the election of a parliamentary government. The establishment of a constitutional democracy, coupled with the continued training of Iraqi security forces—now exceeding 210,000 personnel—will in time allow the Iraqis to defend themselves, and the United States to bring our troop levels down.

Around the country, Iraqi forces are now overseeing 72 percent of security checkpoints and leading 43 percent of all combat patrols. Two Iraqi brigades have been assigned their own battle space in Baghdad in an area once a haven for insurgents.

Freedom and democracy in Iraq are the terrorists' worst nightmare. They know what is at stake and try desperately to derail our success. In a letter intercepted last month from Bin Laden's deputy Zawahiri to al-Qaida's leader in Iraq—the terror network's plan was exposed: to expel the Americans from Iraq, establish radical Islamist authority in the country, and extend the terrorists' jihad into neighboring countries and around the world. They seek to destroy our very way of life. We cannot cut and run—we know all too well what is at stake in this global war against terror. To our men and women in uniform who are protecting our freedom and our security, I say thank you and God bless you. You make us so very proud.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

FIGHTING THE WAR ON TERRORISM

Mr. THOMAS. Mr. President, I thank the Senator from North Carolina for her comments. Certainly I agree with what she has had to say.

Having spent the last weekend, as most of us did, celebrating various events on Veterans Day, I was very much impressed with what we did in my State of Wyoming where we had ceremonies at cemeteries, recognizing all that our veterans have done throughout the years for this country, and the sacrifices that were made by many people over many years to allow us to continue to have the freedoms which we have in our country.

I was particularly impressed by one of the events we had at a school where kids—junior high youngsters—sat there listening to the events that had gone by, and I think probably mostly unaware of the fact that there had been years of sacrifice by so many people to maintain and to protect the freedom of this country.

I think it is appropriate, as we look at all that has been done over the years, that we again focus on those who are now continuing to protect the freedoms of this country—those who are now in the Middle East doing the things we need to be done to ensure that in this country we have our freedom and that this freedom will be expanded to others. I think it is appropriate that we talk about this at this time. It is appropriate also that we continue to support our troops who are there doing these things for us.

One of the most difficult things that could happen in terms of our success and accomplishing our goals there would be to erode the support we have here—and that is not going to happen. We know we will support our troops doing the jobs they are doing.

The war on terror is being fought in Afghanistan and Iraq to fundamentally change the environment that has given rise to Islamic extremism and, of course, brought about, among other things, the terror attacks of 9/11. It is one to bring justice to not only the perpetrators of those horrific attacks but also to change the conditions in the Middle East that brought them about. That is the test. That is the job we must finish. The introduction of a stable democracy and freedom to that oppressed region of the world is the best way to address long term that program and problem.

The ongoing operations in Iraq and Afghanistan are necessary to neutralize and eliminate the elements that produced extreme terrorism. We have made great steps since the liberation in Iraq and Afghanistan from the brutal regimes of Saddam Hussein and the Taliban. Both countries, as we all know, have reached major milestones in recent months by dramatically electing their own governments. The Iraqi people turned out again in great numbers and voted for a new constitution; 79 percent of Iraqi voters accepted in that vote, including a Sunni minority. This is real progress.

On the 15th of December, Iraqis will go to the polls once again to vote on parliamentary elections. This is an unmistakable shift from tyranny and is being replaced with democracy.

The Iraqi troops and forces have shouldered a great deal of the security efforts, as they should. I was very impressed when I was in Iraq at the training taking place for the troops. I was impressed riding around in military vehicles when the little kids on the street waved and cheered when they would see U.S. forces. I am very impressed, also, at the normalcy, day to day, for most Iraqis. Unfortunately, we have insurgents and the terrorists who disturb citizens on a daily basis. However, the normalcy there is relatively calm, surprisingly so, on the streets of Baghdad.

There are a good many Iraqi army operation specialists and battalions in the regular military but also looking into the policing aspect. It is not in many cases a regular military operation as much as it is a security operation for insurgents. They are doing both of these things. I am impressed with that.

Thirty-six of the units are taking leave with their coalition partners in operating independently; 28 special police battalions are capable of these operations. More than 87,000 soldiers and sailors have been trained. That is a very good thing.

It is fair to say we are making significant progress in the war on terror and creating a stable and democratic Iraq and Afghanistan that will no longer be the breeding ground for aggression. President Bush's vision is clear. Our work in Iraq and Afghanistan is essential to our own security.

There has been great debate, discussion, and questions about why we are there. The fact is, we are there. The fact is, we had reason to be there. The fact is, all the folks who are now grumbling had the same information and helped make the decision at the time and agreed with the decision at the time. We need to complete our task.

By taking the fight to the enemy, we have protected America at home. We have to remember for years terrorists attacked the United States with little or no reaction from the United States. In 1993, terrorists bombed the World Trade Center, killing 6 people and wounding more than 1,000. In 1996, terrorists bombed the U.S. military living quarters at the Khobar Towers in Saudi Arabia, killing 19. In 1998, followers of Osama bin Laden attacked U.S. Embassies in Kenya, killing and wounding hundreds. In 2000, Osama bin Laden's followers attacked the USS Cole in the harbor of Yemen, killing 17 and wounding 39. Nearly 3,000 innocent Americans were killed September 11 before we resolved we were under attack.

In Afghanistan, United States and British forces joined the ally, anti-Taliban troops in the assault. We are fighting beside those partners over there and moving forward. We have a number of activities going on.

In September 2005, Afghanistan held the first parliamentary election in Afghanistan in more than 30 years. Five hundred eighty-three men and women previously regarded as third-class citizens campaigned for 25 of the available seats. Afghan women received ballots in September 2005. In a country of nearly 30 million voting age people, more than 12 million registered to vote. It is a substantial change.

In 2003, the forces we have talked about already in Iraq went on with votes. In June the Iraqi people assumed full sovereignty and moved forward and more than 8 million people voted.

This is where we are. We are making real progress. We have a goal. No one knows exactly what the date will be for accepting that goal. I don't think anyone ever knows a date in wars. We do have to describe more clearly our purpose. We are doing that. We have to understand more clearly we are making a good deal of progress.

The special inspector general's most recent report indicates service men and women completed work on 762 out of 834 schools. I was there, and we toured some of the schools. They had such a change, brought about largely by our troops. We put 5 out of 12 major airports back in place, 66 railroad stations, and so on.

A great deal of progress is being made. We have had a good many changes. In terms of the leadership that used to be all around Osama bin Laden, much of that is gone. Much of that leadership is no longer there. We are changing.

People understand the people of that country can defend and take care of themselves. We are moving in that direction.

Our fighting men and women continue to help in Iraq. We will continue to help. I remain concerned about the violence. I agree the cost is high. I agree clearly that as soon as we complete our task, we should do that and turn this over to the Iraqis. The important thing is they are prepared to begin to go ahead and operate their country for which we have helped provide the opportunity.

It is very important to complete the mission. I believe we are succeeding. The stakes are very high. I believe it is terribly important as Americans we understand what has happened is similar to what has happened through the years where people have given so much to be able to move and change the world so that our freedoms and other freedoms can exist, and we have the kind of world we all would like. The stakes are very high. Certainly, we want to continue to complete our task. It is important we do that. It is important we stay attached.

I have no problem asking for more information with regard to where we are. I am very opposed to the idea of insisting on the date set by the President. That is not reasonable in this situation. I am very proud and very pleased of what our folks are doing there. I am glad we are doing the job that needs to be done. There is real progress being made. We want to continue that progress.

I say, again, as many Members are saying, we have engaged in a very necessary activity. We are making real progress. It is terribly important we support the people who are there, that we support the completion of this task that we have set about of freedom for all.

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

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

COMMERCE-STATE-JUSTICE APPROPRIATIONS

Mr. COBURN. Mr. President, I will spend a few minutes talking about the Commerce-Justice-State-Science appropriations bill and about my reasons for voting against it when it comes up today.

This year we added $538 billion to our debt as of September 30 for the last year. That translates into $1,783 for every man, woman, and child in this country. The cost of every project or program that we cannot afford will be borne with compounding interest by our children and our grandchildren. The American people choose every day to determine their financial priorities. It should be not too much for them to ask Congress to do the same thing.

There are multiple projects that are funded in this bill that should not be considered within the priorities of what we have. The first is, as we are fighting a war, we have a Katrina, Rita, and Wilma disaster, we have $538 billion that we could not pay for last year that we added to the debt, and we are going to put $680 million into a program at NASA to go to Mars? I believe Mars should wait. I don't believe we should be spending $680 million to go to Mars. I believe we should spend $680 million to help our neighbors and our friends in the hurricane-ravaged States.

We are going to spend $80 million for the Advanced Technology Program. Granted, that is less than what we spent before, but since 1990 the American taxpayers have given over three-quarters of a billion dollars to Fortune 500 companies for technology programs where they, in fact, could have financed those things themselves.

We are going to spend $1.5 million to study highly migratory sharks, $825,000 to study Hawaiian monk seals, and $235,000 to study yellow-finned tuna. We are going to spend $7 million on the Alaska Fisheries Marketing Board, which this year just spent $500,000 to paint an airplane to have a salmon on it.

The priorities are wrong. We need to readjust the priorities. I hope my colleagues will look at that and make the effort.

The other thing I think is critical with this bill and is underfunded——

The PRESIDING OFFICER. The Senator will be informed the majority's time has expired.

Mr. DURBIN. Mr. President, I am prepared to yield 2 minutes from the minority time to the Senator from Oklahoma.

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

Mr. COBURN. Mr. President, I thank the Senator from Illinois.

Byrne-JAG funding is cut in this bill. If there is anything we know that our sheriffs, our police departments, our drug courts, our drug rehabilitation programs need, it is help in terms of fighting the battle on drugs. I am very disappointed. The Senate passed $900 million for Byrne-JAG grants. It was paid for. It was offset when we passed it through the Senate. It came with full offsets to prioritize, to meet the needs of those people who are presently caught up in drugs.

In Oklahoma, we have had fantastic results with drug courts and drug rehabilitation. Eighty-one percent of the people who now come through these drug courts have a full-time job and never regress back to drugs. What we know is drug treatment works. What we know is drug courts work. It is time for us to reconsider our priorities.

I ask the Members of this body to reconsider this conference report in light of the lack of priorities that should be there.

With that, I yield the remainder of my time and thank the Senator from Illinois for his courtesy.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

IRAQ

Mr. DURBIN. Mr. President, this morning's newspapers across America have lead stories that I think are a grim reminder to us of the reality of life in Washington and the challenges we face. The lead stories in most newspapers across America relate to a vote on the Senate floor yesterday. I believe it was a historic vote. By a vote of 79 to 19, Republican and Democratic Senators said it is time for change in this administration's policy in Iraq.

Certainly, when you look at the statistics, it is understandable: Over 2,060 of our best and bravest soldiers have lost their lives in Iraq. Over 15,000 have been gravely wounded, some of them with injuries that will change their lives. And, of course, 25,000 or 30,000 innocent Iraqis—innocent Iraqis—have died during the course of this war.

This war has gone on for over 3 years, after the administration promised us, in the words of Secretary Rumsfeld, that he could not imagine we would be there for more than 6 months. It is now beyond 3 years; no end in sight.

The American people are frustrated, as they should be; frustrated by the fact that this administration made a case for the war in Iraq that was false. You can recall it, as I do, the President, the Vice President, the Secretary of Defense, Condoleezza Rice, even Secretary of State Powell, making statements about the existence of weapons of mass destruction in Iraq that were a threat to the Middle East and to the world that could easily fall into the hands of terrorists; statements over and over again about nuclear weapons, Condoleezza Rice talking about mushroom clouds that we could fear if we did not invade Iraq and stop Saddam Hussein; and, of course, linking our national tragedy of 9/11 with Saddam Hussein, saying that somehow he had connections with al-Qaida.

Well, it turned out all of those things were false—every single one of them—so false to the point where the President had to do something I do not think has ever been done in the history of this Nation. He had to apologize and recant a remark he made in his State of the Union Address about this yellow cake coming from Niger in Africa so the Iraqis could use it to make nuclear weapons. It turned out it was a phony. It was not true.

So we were drawn into a war under false pretenses. We all knew how terrible Saddam Hussein was, but we certainly came to understand that the specific reasons given for the invasion of Iraq turned out not to be true, one after the other. Weapons of mass destruction, nuclear weapons, connections with al-Qaida, yellow cake from Niger, so-called mobile biological weapons laboratories—all of these things turned out to be totally false.

It is understandable the American people are concerned about it because if you measure an abuse of power by a government, could there be an abuse of power any worse than misleading the people of a country into believing that a war is necessary?

That is, of course, why the Senate Democrats took to the floor just 2 weeks ago and demanded that the promised investigation of this administration for the potential misuse of intelligence be completed by the Senate Intelligence Committee. It has been over 20 months—20 months—since we were promised that this honest investigation would take place, and nothing has happened.

There have been small parts of it that have been addressed, but I think we all know what the story is. The Senate Intelligence Committee, under the control of the President's party, does not want to open that door and look inside. Well, why should we? Why should we reflect and dwell on the past? Some say: Let's look forward. But if we do not get to the heart of this issue, the truth of the matter, if we are not honest with the American people and straightforward as to what happened leading up to that invasion of Iraq, then I think we are derelict in our constitutional responsibilities.

This Congress is designed as one branch of Government to serve as oversight of the executive branch of Government. The failure of the Senate Intelligence Committee, for more than 20 months, to produce this intelligence analysis, which they promised, is proof positive they are dragging their feet, unwilling to accept the responsibility which they have publicly proclaimed.

So yesterday we passed on the floor, by a vote of 79 to 19, a clear statement to this administration that the policy in Iraq must change. No. 1, we said the year 2006 will not just be another year in Iraq, another year of casualties, another year of death, another year of our despondency over whether this is going to end well. It will be a year of significant transition. That is what the Democratic amendment said. That is what was adopted.

Secondly, we served notice on Iraqis that it is their responsibility, not the American responsibility, to secure their own country and to build a political coalition that can defeat the insurgency. I had hoped we would have even stronger language to say to the Iraqis: We are not here indefinitely. We want to bring our troops home. The Republican side watered down that language, but the message was still clear.

The third element is important as well. Accountability is essential. This administration must be held accountable for whether we were prepared not only for the invasion of Iraq but for what occurred afterwards. You know what happened afterwards. Secretary Rumsfeld visited with our troops, and a soldier came forward, held up his hand to ask a question, and said: Mr. Secretary of Defense Rumsfeld, why is it that we soldiers have to scavenge through junk piles to find pieces of armor to stick on these humvees to protect ourselves? A moment of great embarrassment for the Secretary, but I am glad that soldier had the courage to stand up and say what we already knew.

We were not prepared. We sent our troops into combat without the necessary humvee armor, without the necessary body armor, without the necessary protection for our helicopters. It was done, and in some respects too late and too little. We lost American soldiers' lives and many were injured because we did not have the right equipment in place.

So now what we are saying is that this administration must be held accountable, to report to Congress every 90 days to tell us in Congress the progress that is being made in protecting our troops, in preparing the Iraqis to defend their own country, in moving that country toward stability, and in moving us to the point where American soldiers can start coming home. That was passed yesterday, 79 to 19.

As the President stood on Veterans Day and in an unprecedented political speech attacked his Democratic critics for saying they did not agree with his war policy, this Senate, on a bipartisan basis yesterday, 79 to 19, said to the President: Your policy in Iraq must change. We need to start looking to bring American soldiers home. And 2006 is the year to begin that process in earnest.

That is why it was a historic vote. Of course, as we look at the statements made in the lead-up to the invasion of Iraq, there is a recurring theme. It turns out that the major sources of intelligence that were passing through the administration and to the American people were passing across the desk of Vice President CHENEY.

Lieutenant Colonel Wilkerson, chief of staff to Secretary of State Colin Powell, referred to a cabal, a cabal led by Vice President CHENEY and Secretary of Defense Rumsfeld, a cabal which set the stage for the invasion of Iraq. The man speaking was not a partisan Democrat. He was the chief of staff to the Secretary of State in the Bush administration, Colin Powell. I think it makes clear that throughout the lead-up to the invasion of Iraq, our Vice President, RICHARD CHENEY, was making statements that did not reflect the truth of what was occurring in Iraq.

Repeatedly, he said Iraq had links to al-Qaida, and that was proven false. Repeatedly, he said Iraq was an imminent threat to the United States, and that was proven false. Repeatedly, Vice President CHENEY said Iraq was trying to acquire nuclear weapons, and that was proven false.

On ''Meet the Press,'' on March 16, 2003, the Vice President said: ''And we believe he [Saddam Hussein] has, in fact, reconstituted nuclear weapons.'' False.

In addition, there were statements made about whether Iraq was trying to acquire uranium from Africa, statements made by the Vice President which turned out to be false, and statements, of course, relative to aluminum tubes. I knew something about that debate because as a member of the Senate Intelligence Committee, I listened as the Department of Defense and the Department of Energy debated whether these aluminum tubes were really all about nuclear weapons. There was a real division within the administration, and I would walk outside the Senate Intelligence Committee room and hear statements made by the Vice President saying: There is no debate. It is all about nuclear weapons.

Now, I could not repeat what I had heard in the Senate Intelligence Committee. I was prohibited from saying it publicly. I knew what he said was false. It is one of the reasons I voted against that resolution to go to war in Iraq.

But again and again the Vice President was taking information, intelligence information, giving it to the American people selectively, making certain that it was always the strongest spin toward the immediate need for a war, and that is how we ended up in the position we are in today.

It is a lot easier to get into a war than it is to get out of one. And we have learned that with the cost in human lives and the cost to America's Treasury.

AMERICA'S ENERGY CRISIS

Mr. DURBIN. Mr. President, the second story on the front pages of this morning's newspapers relates to the energy crisis in America. You do not have to describe that to any American who has filled up their gas tank in the last several months. And in the weeks ahead, when you start paying your home heating bills, if you live in one of the colder parts of America, you will see the energy problems we are facing.

Of course, it reflects the fact we have no energy policy in this country. In the White House, with the President and Vice President, we have two men who have long careers with the energy industries and with oil companies, and the energy policy they are pushing reflects it.

What did we have in the so-called Energy bill signed by the President just in August of this year? A $9 billion subsidy to oil companies, a $9 billion subsidy to companies which are realizing record-breaking profits at this very moment.

Why in the world would we be sending subsidies, Federal taxpayers' dollars, to these oil companies at a moment in time when they are realizing the largest profits in history? I think every American knows why. When you go to the gas station to fill up your car or your truck, and you put that charge on your credit card, the money from your credit card is going directly to the boardrooms of these oil companies that are realizing more money than they ever have in history.

We wanted to know who wrote the administration's energy bill, and we could not find out. Neither the President nor the Vice President, who was leading the effort to create this energy policy, would tell the American people who was part of it.

This morning's front page story in the Washington Post tells us who was part of it. A document obtained by the Washington Post this week shows that officials from ExxonMobil, Conoco before its merger with Phillips, Shell Oil, and BP America met in the White House complex with Cheney aides who were developing the national energy policy, parts of which became law and parts of which are still being debated.

It comes as no surprise. We suspected as much. A lawsuit was filed to specifically determine whether the oil company executives wrote this Energy bill. That lawsuit was fought all the way to the Supreme Court, and the Supreme Court ruled that the White House didn't have to tell the American people who was involved. Now this memo tells us.

The reason it is important is that last week the executives of these oil companies came before Congress. You probably heard about the hearing before the Senate Commerce Committee. Senator Maria Cantwell of Washington insisted that these oil company executives be sworn in and testify under oath, as the tobacco company executives did a few years ago. But Senator STEVENS, chairman of the committee, refused to allow them to be sworn in. Why? So they couldn't be held accountable if they didn't tell the truth.

Unfortunately, some of the statements made in responses to questions by Senator LAUTENBERG raised serious questions as to whether those oil company executives were candid and forthcoming in terms of their involvement in this very bill, the Energy bill, which this memorandum tells us was prepared with the oil company executives. Once again, the special interests trumped America's families and consumers, businesses and farmers. The Energy bill was written with the Vice President's direction that rewarded oil companies at a time when we should have been sensitive to protecting American consumers. Unfortunately, it reflects what has been happening in this capital for too long.

LEWIS LIBBY INDICTMENT

Mr. DURBIN. The third issue is one which everyone is aware of; that is, the fact that for the first time in over a century, some high-level staffer in the White House has been indicted. Lewis ''Scooter'' Libby was indicted a few weeks ago, charged with perjury and obstruction of justice related to the Valerie Plame affair. Everyone is aware of it now. Joe Wilson, former Ambassador, sent to Africa to determine whether assertions by the administration about yellow cake uranium coming from Africa to Iraq were true, reached the conclusion they were not. When he published that conclusion, he was attacked in the press by Robert Novak in a column where Mr. Novak said two White House sources had told him that Joseph Wilson's wife Valerie Plame was a CIA agent.

In fact, she was an undercover agent whose identity was being protected. But the White House, in an effort to discredit its critics and to silence them, attacked Joe Wilson's wife Valerie Plame and, in the process, disclosed the identity of a CIA agent. There is a question raised as to whether that violates the law. The fact that people work in covert activities and risk their lives for America is something we should never take for granted. The law is designed to protect them. But the White House decided, for political reasons and in order to protect against the disclosure that they were manufacturing intelligence to justify the war, they would attack Joseph Wilson's wife Valerie Plame. For that action and for the statements he made to the FBI and the grand jury, Mr. Libby was indicted. The investigation continues.

AHMED CHALABI

Mr. DURBIN. The last issue, which is one that is topical, relates to a man by the name of Ahmed Chalabi. What a fascinating man he is. Ahmed Chalabi is an Iraqi exile, now back in Iraq after the fall of Saddam Hussein. What an interesting history this man has.

In 1992, Ahmed Chalabi was convicted of bank fraud and embezzlement of over $230 million for a bank he was running in Jordan. To escape the sentence of 22 years in prison, he fled to London and then to the United States, and certainly that wasn't the last we heard of him. He created something called the Iraqi National Congress, which ingratiated itself with the Bush administration to the point where the Bush administration paid to Ahmed Chalabi's Iraqi National Congress $39 million. Then Mr. Chalabi gave us misleading information about the situation in Iraq, saying there were mobile biological weapons labs, which turned out to be false, information from a source named "Curveball," of all things, one of most discredited sources of intelligence we have ever had who happened to be the brother of one of Chalabi's aides. It turned out that the information he was feeding us all along about Iraq, by and large, was false.

Mr. Chalabi was unrepentant when he was confronted with this. From the London Daily Telegraph, in an article on February 19, 2004, I quote:

> Mr. Chalabi, by far the most effective anti-Saddam lobbyist in Washington, shrugged off charges that he deliberately misled U.S. Intelligence. "We are heroes in error," he told the Telegraph in Baghdad.

He goes on to say:

> As far as we're concerned, we've been entirely successful. That tyrant Saddam [Hussein] is gone and the Americans are in Baghdad. What was said before is not important. The Bush administration is looking for a scapegoat. We're ready to fall on our swords if he wants.

That was not the end of the story. Now that he has misled the Americans into invading Iraq, now that he has us in a position where our American forces are there, he is trying to build up his political fortunes. In May of last year, Iraqi security forces raided his home for documents, accusing him of passing American secrets to the Iranians and endangering American troops and security. He is currently under active investigation.

You might expect this man would be in hiding. He is not. He is in Washington. He is not being served with a subpoena. He is being served lunch. Do you know whom he has visited with in the last week, this man under active investigation? Vice President CHENEY is one; Secretary of State Condoleezza Rice; Secretary of Defense Donald Rumsfeld; the National Security Adviser, Stephen Hadley; the Treasury Secretary, John Snow. And he is under active investigation by the FBI for having sold American secrets to the Iranians.

I don't understand this. It seems to me that if this man is suspected of endangering our troops, he should be called in for questioning, if not more. Instead, he is being called in for a cup of coffee and a cookie. That is what this administration thinks is playing straight with Iraq.

The American people know better. I am glad yesterday, by a vote of 79 to 19, we told this administration their policies in Iraq have to change.

It is long overdue for the Vice President of the United States to hold a press conference and answer questions. It is long overdue for him to speak truth to the American people, to be candid about the misuse of intelligence leading to the invasion of Iraq, to be candid about his role in disclosing the identity of Valerie Plame to Lewis "Scooter" Libby, to be candid about his role in terms of meeting with oil company executives to create this Energy bill, and to be honest about his relationship with Ahmed Chalabi. The American people deserve straightforward, honest answers.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent to speak for 15 minutes to complete my statement.

Mr. ENZI. I object. We have the pension bill scheduled on a very tight time schedule.

Mr. SCHUMER. It is only an additional 3 or 4 minutes. We have 8½ left, so it would be an additional 5.

Mr. ENZI. OK.

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

SAMUEL ALITO

Mr. SCHUMER. Mr. President, 1 month ago, I expected to be on the Senate floor sometime about now engaged in a debate over the pros and cons of President Bush's nominee to the Supreme Court. Of course, I thought it would be Harriet Miers we would be debating. But that never occurred. As the Senate takes up the nomination of Harriet Miers' replacement, Judge Samuel Alito, we should all continually bear in mind how we got to this point because recent history goes a long way in explaining why the American people want us to examine every portion of Judge Alito's record with great care.

Harriet Miers' nomination was blocked by a cadre of conservative critics who lambasted her at every turn. Why? Because they were not satisfied that her judicial ideology matched their conservative extremism. They were not certain that her legal philosophy squared with their political agenda. In the end, Harriet Miers' nomination was blocked before she could explain her judicial philosophy, before she could have a full and fair hearing to answer the doubters, before she could have an up-or-down vote on the Senate floor. She was blocked by conservatives and Republicans, not Democrats. She was not given an up-or-down vote by many of the same people who are clamoring for an up-or-down vote on Samuel Alito.

The standards seem to change with the nominee. Many of the very people who denied Harriet Miers an up-or-down vote are now saying that there is an imperative to give Samuel Alito one. So before we even begin examining Judge Alito's record, a natural cause for concern is that he was picked to placate a group of vocal and hard-right activists who have been lobbying for him for many years. Many of those who now call for an up-or-down vote are the same ones who denied that vote to Harriet Miers.

Anyone who thinks that this nomination is a foregone conclusion is sadly mistaken. There are too many questions still to be answered, too many doubts still to be alleviated to say this nomination is a slam dunk. The most important thing we must look at is Judge Alito's judicial record. And at least on first perusal, there are reasons to be troubled. In case after case after case, Judge Alito gives the impression of applying meticulous legal reasoning, but each time he happens to reach the most conservative result. That is why he apparently dissented more than most judges in his circuit.

I met with Judge Alito. I found him to be bright and capable and down to earth. He has an impressive life story and history of accomplishment. And his family story is not unlike mine and that of millions of Americans whose families came to these shores in the last two generations and, due to this great system of ours, climbed the ladder of success. But this is about more than legal achievement. In case after case, Judge Alito seems to find a way to rule on the side of business over the consumer, on the side of employer over employee, and often against civil rights, against workers' rights, against women's rights.

Though any analysis is still preliminary—and, of course, we must all wait for the hearings because those will be the most important thing—a quick review of some cases reveals a troubling pattern and warrants tough questioning at Judge Alito's hearing.

Often he stands alone in his decisions, reaching conclusions that almost no other judge has reached or would reach. The machine gun case, Rybar, is very troubling. Judge Alito alone found that Congress could not regulate machine guns, even though the majority ruled that Congress could, even though every other circuit to consider the issue ruled the other way, and even though courts have held for the last 60 years that Congress has such power. Judge Alito was in that case and on that issue an outlier.

This is an issue about which there was and is broad consensus. He went out of his way to find a means to reject that law. When I met with Judge Alito, he cited three bases for his dissent. He said the most important was the lack of specific congressional findings that regulation of machine guns affects interstate commerce. I found this explanation, in all honesty, unpersuasive, to say the least. The effect on commerce is obvious. Congress has passed laws relating to machine guns since the 1930s. There has never been any doubt that their possession and sale affect commerce. Ninety percent of the crime guns in New York come from out of State. So of course it affects interstate commerce.

It seems as if, in certain cases, Judge Alito would want Congress to make a finding that the sky is blue before he will give Congress the ability to make laws. So this case raises questions. Will Judge Alito be unduly cramped in his reading of the Constitution? Will he engage in judicial activism to find ways to strike down laws that the American people want their elected representatives to pass and that the Constitution authorizes? It is too early to tell. But this merits serious and tough questioning at the hearing.

There are other cases similarly disturbing. On sex discrimination, Judge Alito was again alone in ruling against the plaintiff in a sex-discrimination suit. Not only was he alone on the original three-judge panel, he was alone when the case was reheard by the entire Third Circuit. He was alone against 11 of his fellow judges who criticized him for raising the bar much too high for a victim of discrimination. The Supreme Court declined to hear the case, so there are more questions. Will Judge Alito be too quick to dismiss victims of discrimination and not give them their day in court?

On title VII, Judge Alito again was alone on a panel in ruling that a civil rights plaintiff had to meet a higher burden to get a trial than the law already provided.

Here is what the majority found extremely troubling. They wrote that ''title VII would be eviscerated'' if they were to follow Judge Alito's analysis—eviscerated, which means victims of discrimination would have no recourse.

In other cases we find the same thing. In Chittester, about the Family and Medical Leave Act; in Doe v. Groody, about strip searches, he was on the other side of the conservative Michael Chertoff. In Riley v. Taylor, he was again alone and the majority criticized him for analysis that served to ''minimize the history of discrimination against black jurors and defendants.'' And, of course, Judge Alito was alone again in Planned Parenthood v. Casey.

These are just a few of Judge Alito's decisions that raise serious concerns and cry out for tough questioning.

While there is much more reading and reviewing to be done, it is not too early to wonder whether there is a troubling pattern in his record. Is there an overall consistency in his approach to law or just in the result? Does he practice judicial restraint always or only when it allows the right outcome? Does he use the guise of legal reasoning to turn the clock back, as he appeared to do in the machine gun case? How do we resolve some apparent contradictions?

For instance, sometimes Judge Alito goes out of his way to defer to the legislature, as when he wanted to uphold Pennsylvania's spousal notification law. But at other times he goes out of his way to strike down an act of the legislature, as when he wrote Congress could not ban machine guns.

Sometimes he reads the text narrowly, as when he struck down a school's anti-harrassment policy, but at other times he reads the text broadly, as when he condoned the strip search of a woman and her 10-year-old daughter, though there was no such language in the warrant.

The disclosures this week of his 1985 Justice Department job application only raise further concern and increase his burden to answer questions fully and forthrightly in the hearing.

In that application he wrote, among other things, that he was ''particularly proud'' of his work to advance the position that ''the Constitution does not protect the right to an abortion.''

That statement cannot be dismissed as a ''personal view'' that will not affect how Judge Alito will approach the legal issue. It is a flat statement of what Judge Alito, at least at one time, believed the Constitution, not his personal belief, said. That is not a personal view such as stating you are pro-choice or pro-life. It is decidedly a legal view which involved judicial philosophy and judicial reasoning. If confirmed, his belief about what the Constitution does and does not protect will have the power through his decisions to become the law of the land.

Because Judge Alito so firmly and specifically stated his personal and legal opinion about this controversial issue while in pursuit of a lesser position, he has an obligation to answer questions at his confirmation hearing for the highest judicial job in the land. He cannot, as previous nominees have done, say, I refuse to answer. Have his views changed? Is his mind made up? Was he exaggerating for a potential employer? And if he was, how should we view what he says to us in the committee as he seeks an even higher position? Is he bent on advancing a particular ideological position?

Past nominees have said they could not discuss these issues for fear of creating a perception of bias. Here, unfortunately, the application itself creates the perception of bias and it will be essential for Judge Alito to address the issue head-on.

In conclusion, every Supreme Court nominee has a high burden. For Judge Alito that burden is triply high: first, because he seems to have been picked to placate the extreme rightwing; second, because of his past statements suggesting a closed mind on certain controversial issues; and, finally, because he is replacing Justice O'Connor, for 25 years the pivotal swing seat on a divided Supreme Court.

I hope Judge Alito will be able to meet that burden.

I yield the floor.

Mr. HATCH. Mr. President, I rise to address the nomination of Samuel Alito to be an Associate Justice of the Supreme Court. Judicial nominees should be judged on their qualifications and their judicial philosophy. On the first point, there is no question that Judge Alito is qualified to sit on the Supreme Court of the United States.

In 1990, when the first President Bush nominated Judge Alito to the U.S. Court of Appeals for the Third Circuit, the American Bar Association unanimously gave him its highest ''well qualified'' rating. This body confirmed him at that time without dissent.

Regarding judicial philosophy, the most important principle is that judges are not politicians. When we hear someone talk only about the results of a judge's decisions, chances are they are applying a political rather than a judicial standard. This is what we heard today on this floor from my Democratic colleagues.

The description of Judge Alito's record by the Senator from New York, Mr. SCHUMER, was all about results. This is how he put it: In case after case, Judge Alito seems to find a way to rule on the side of business over the consumer; on the side of employer over employee; and often against civil rights, against workers' rights, against women's rights.

It would be tough to present a more distorted picture of what judges actually do. Judges do not decide for or against the rights of groups. Judges do not take the side of one group against another. To suggest, as the Senator from New York did, that Judge Alito is actually biased toward certain parties, that he intends to take a particular side, that he, in the Senator's words, seems to find a way to rule a certain way, is just beyond the pale.

Perhaps my Democratic colleagues could provide a list of the side that judges are supposed to take in this case or that. Perhaps they could give us a rundown of the groups whose rights judges are supposed to favor, regardless of the facts. It might be something like a rate card or perhaps just a big piece of litmus paper. That would make this confirmation process a whole lot easier for all of us. Nominees could just check boxes and get a confirmation score.

Are you for big business or are you for the little guy? Are you for this or are you for that? The facts do not make any difference, no matter how right the big guy might be or the little guy might be.

Politicians take sides. Politicians promote political interests. Politicians pursue agendas. Judges are not politicians. Judges settle legal disputes between specific parties by applying the law to specific facts. Without talking about the facts and the law, it is impossible to properly evaluate judicial decisions.

It is not enough, as we heard this morning, to toss in words like ''troubling'' since all that means is that the person using that label does not like the result. It is not enough to observe that Judge Alito was alone in dissent or that the Supreme Court declined to review a particular decision. Those would be marks of distinction of judicial courage if the Senator from New York liked the result.

If such results-oriented litmus tests are appropriate, Judge Alito's long record contains results to fit every political taste.

Judge Alito has voted on the pro-choice side in some of his abortion-related cases. He has voted for civil rights plaintiffs, against prosecutors, and even in favor of death row inmates desiring to file habeas corpus petitions. Imagine that. Judge Alito will likely get no credit from my liberal friends for these votes, but he should.

As I said, we must apply a judicial rather than a political standard to evaluate a judicial rather than a political record.

This morning, the minority leader, Senator REID, also spoke about the Alito nomination. I would like to respond to a few of his points. First, he said the nomination was not, as he put it, ''the product of consultation with Senate Democrats as envisioned by the Founding Fathers.''

America's Founders envisioned no such thing but actually advised against it. The Founders gave the power to nominate and appoint exclusively to the President. The Senate's role is to advise the President whether he should appoint someone he has already nominated, expressing that advice through an up-or-down vote.

Some of my Democratic colleagues are fond of taking jabs at President Bush by saying that this is the third nomination to replace Justice Sandra Day O'Connor. If that is true, then he should get credit for consulting with more than 70 Senators, more than any President has ever done regarding a Supreme Court nominee.

The idea that consultations for the same position must begin all over again when the first nominee is appointed elsewhere is absurd.

I hope this will be a fair, honest, and thorough process that results in an up-or-down confirmation vote. I applaud the minority leader for saying this morning that every judicial nominee is entitled to an up-or-down vote. In the 108th Congress, of course, he had a different attitude, leading filibusters against 10 different appeals court nominees, along with Senator Daschle.

While the minority leader, this morning, lamented the fact that Judge Alito is not Hispanic, one of the filibusters he led in 2003 targeted Miguel Estrada, a highly qualified nominee to the Federal appeals bench. Perhaps race only matters some of the time.

Until Democratic Senators began filibustering judicial nominees in 2003 with partisan, leader-led filibusters, it has been Senate tradition that judicial nominees reaching the floor received up-or-down votes. While I hope the minority leader will help us return to that tradition, and I believe he may, he may have a bit of a challenge on his hands.

Although the minority leader claimed this morning that not a single Democrat has talked about filibustering the Alito nomination, the Senator from California, Mrs. BOXER, told the Associated Press on November 1 that ''the filibuster is on the table.''

According to the Baltimore Sun on November 2, the Senator from Iowa, Mr. HARKIN, said ''I believe Democrats will filibuster this nominee.''

The Associated Press reported on November 3 that Democrats have, in fact, raised the possibility of a filibuster. Yes, Democrats are already talking filibuster, and I hope the minority leader meant what he said this morning and urges them to take a deep breath.

I urge my colleagues, the media, and the American people to apply the right standard to this and to all judicial nominations. It must be a judicial rather than a political standard when we decide these matters. It must examine the law and the facts of cases as well as the results, and it must be fair to this highly qualified and honorable nominee.

I have been kind of tough on my colleagues on the other side, but I believe everything I said is true. I believe it is time to get rid of the populism and start talking about what we can do to help America. One of the best things we can do is to confirm Judge Alito to the U.S. Supreme Court.

I yield the floor.

Mr. KENNEDY. Mr. President, many Members have serious reservations about the Alito nomination to the Supreme Court.

It is obvious that Judge Alito was chosen because the right wing of the Republican Party felt Harriet Miers did not meet their litmus test for Federal judges, a test of right-wing philosophy that was laid out in great detail by the Justice Department itself when Ed Meese was Attorney General in the 1980s. The right wing flexed its muscle and rebelled even when George Bush said, in effect: Trust me—she will be your kind of justice.

Well before Judge Alito was nominated, these core supporters of the President were aware of the President's dwindling public support, and knew he would be highly unlikely to cross them again. They were certain that Judge Alito passed their ideological test. They embraced him immediately, then moved in lock step with the White House to support and defend him.

The reasons for that immediate endorsement by the right are obvious. On key issues of equal rights, fairness, and access to justice, he has repeatedly found ways to keep people from vindicating their rights, obtaining remedies, and protecting themselves from government invasions of their privacy.

He supported a warrantless strip search of a 10-year-old girl, the elimination of black jurors despite a black defendant's objection, the dismissal of a case against an industrial polluter who had 150 water quality violations, the power of a state to intrude in personal medical decisions of women in Pennsylvania, and people who wanted to make machine guns in their homes.

On Tuesday, the Reagan Presidential Library made public his 1985 application for a promotion in the Meese Justice Department, in which he pledged his allegiance to the right wing views that Attorney General Meese stood for. In the application, he stated, ''I am and always have been . . . an adherent to'' these views.

He traced his views back to Barry Goldwater's 1964 campaign, which featured strong opposition to civil rights at a time when the growing national support for such rights had just accomplished the landmark Civil Rights Acts of 1964 banning racial discrimination in public accommodations.

As far back as college, he said, his view of constitutional law had been ''motivated in large part by disagreement with the Warren Court decisions,'' particularly the historic decisions supporting basic fairness in the criminal justice system, separation of church and state, and fair districting for legislative elections. In short, for all 20 years of his prior political activity, he had been a dedicated right wing advocate, especially on the major issues that led to the posting of the ''Impeach Earl Warren'' billboards on highways at the time.

We have also learned of his failure to recuse himself in a case involving the Vanguard mutual funds, in which he had a personal investment of hundreds of thousands of dollars.

A different justification was tried out each time his participation was challenged in recent weeks, even though he had specifically pledged to the Senate Judiciary Committee not to sit on ''any cases involving the Vanguard companies,'' regardless of whether he was technically required to recuse himself.

It appears that either the Judge or the White House is desperately running new explanations up the flagpole to see if anyone salutes them.

When I saw him yesterday, he dismissed the blunt ideological commitments in his application to the Meese Justice Department as simply part of the job application process, and told me, in essence, that it shouldn't be taken seriously. But now he is applying for a job on the Supreme Court.

Should we take his assurances about ignoring ideology as a judge any more seriously now?

The American people have a right to better answers about the record of any nominee to the Nation's highest Court. Certainly, in the hearings to come, Senators will learn a great deal more about whether Judge Alito has the basic commitment to core constitutional rights essential to our Nation, and I look forward to those hearings.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there any further morning business? If not, morning business is closed.

PENSION SECURITY AND TRANSPARENCY ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 1783 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1783) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the managers' amendment at the desk is agreed to. The bill will be considered original text for further amendment.

The amendment (No. 2581) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. ENZI. Mr. President, this is a very exciting day. We are here to the debate on the pensions bill. Every day hard-working Americans go to their jobs, they are confident we here in Washington are looking out for them and doing everything we can to assure that they will be able to retire some day and live the life they have always dreamed about. For our Nation's older workers and those who have already retired, there are few things more important to them than the health of their pension plan and the protection it provides. It involves younger workers, too.

I am glad we are at this point. This may be one of the biggest bills that has ever been covered with as little debate as we will have today. Part of the reason for that is how detailed it is and how many moving parts there are. I congratulate all of the people who have worked on this bill and worked cooperatively, both sides of the aisle. We have even had some conversations with the other end of the building in order to be able to get it to this point at this time.

I particularly have to commend Senator KENNEDY and his staff and my staff. August is normally a time when we are at recess and traveling our States, as I was and Senator KENNEDY was. It is normally a time our staff can catch up on things. It was not. It was a time they were heavily involved in negotiations to come up with the best possible package for protecting the retirement of the people of this country, and they worked virtually around the clock during the entire month of August. Senator KENNEDY and I were on the phone several times working out some of the big issues and trying to keep the focus on the direction it needed to go.

I also have to specifically congratulate Senator ISAKSON. He has been our coordinator with airlines on this whole thing, and had the airlines not had a crisis, I am not sure we would be here today debating pensions. It was enough of a focal point, enough of an impetus that it got us on the track of solving all of the pension issues, in all of the aspects, and I think we have a very complete reform package here.

Of course, I would be remiss if I did not mention Senator LOTT and Senator COLEMAN, who also were strong advocates on getting a solution for airlines so we would stop seeing the airlines go into bankruptcy over their pension problem. We have a team of them here today to add one more amendment that will make sure we will have airlines and to make sure that airline employees will have a solvent retirement package.

I also have to thank Senator DEWINE and Senator MIKULSKI, the chairman and ranking member of the Subcommittee on Pensions on Health, Education, Labor and Pensions. They held a number of hearings that set up the data so we would actually have information on which to base this pension reform. They have done a tremendous job, not just with the committee but also representing particularly people in manufacturing across this country who also have some very special problems at this point in time.

I would also mention Senators Stabenow and Senator LEVIN, who have a majority of those manufacturing workers. In fact, they probably represent more manufacturing workers than there are people in the whole State of Wyoming. But the team of people worked together and put together a bill for the Health, Education, Labor and Pensions Committee. Senator GRASSLEY and I, and the members of the Budget Committee, had an amendment in the budget bill that required that the HELP Committee and the Finance Committee merge a bill. I have to congratulate Senator GRASSLEY and Senator BAUCUS for their tremendous work with the Finance Committee to put together a separate bill that covered all the jurisdictional areas of the Finance Committee, and then their effort with us to merge a bill, which is the bill that is here today.

I have to tell you there were a lot of people betting that, first, neither committee would be able to report a bill out of committee and, secondly, that we would never be able to merge the two bills. It has a lot to do with Senator BAUCUS and Senator GRASSLEY and their staffs being extremely involved and working again in this detailed, ''many moving parts'' bill. That is the reason we are here today and have a rather comprehensive bill, and it is one that people have been scrutinizing and working on through all of the months of this year.

I think it is a tribute to all of the people who have worked on it that we have limited debate on S. 1783. Only two amendments are being offered, and then we will have a final vote. That is a lot of agreement for this body of 100 people who usually have a lot of disagreement.

I have some other comments, but I will make them later and allow people to get on with describing the actual workings of this bill to the point where we can do a final vote.

I yield to my neighbor from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, first, I thank my colleague, Senator ENZI from Wyoming, the chairman of the HELP Committee. As he has indicated, his committee, along with Senator KENNEDY, the ranking member of that committee, Senator GRASSLEY, chairman of the Finance Committee, and myself, the four of us worked together to be where we are today. Clearly we are where we are today because a lot of employees, a lot of retirees are very worried about their pension benefits. The essential way to help address that situation is to make sure these plans are more fully funded so as the promise is made, the promise is kept and, second, to make sure the backstop of the PBGC is also there when companies facing incredible pressures worldwide feel they have to no longer live up to their pension obligations and those obligations are passed on to the PBGC.

It is worldwide competitive pressures that big American companies and smaller American companies are facing as well as the Enron collapse which has forced us to take a good, hard look at this to try to find some good solutions. I thank Senator ENZI, Senator GRASSLEY, and Senator KENNEDY for their very good work.

It is important to say a little bit about this bill so Americans know what we are doing today. Millions of workers clearly have worked very hard over their lifetime. American workers, when they work, feel they are playing by the rules. They want to play by the rules and they want to do what is right. This bill, frankly, is about making sure that the retirement benefits are there when people need them, more likely to be there than a lot of people think.

As we start the debate, let's remember why we are here. We are here to protect workers' pension benefits, plainly and simply. That is why we are here. This need was highlighted recently by cover stories in Time magazine and the New York Times Sunday magazine. Their titles were ''The Broken Promise''—that was Time magazine—and ''The End of Pensions'' in the New York Times magazine. I highly recommend all Members of this body read these articles. I read them both. They are very thorough and very perceptive in stating the problems and some of the solutions to the problems Americans face in having retirement benefits.

The Pension Benefit Guaranty Corporation, PBGC, was established to protect workers' pensions, but there are limits on PBGC's guarantees. Many participants have been promised benefits in excess of those guaranteed by the PBGC. When a company fails and the pension plan terminates with unfunded benefit promises, these workers and retirees pay severely for pension underfunding with part of their own hard-earned retirement benefits.

For example, the PBGC—and that is the outfit that takes over failed plans—has estimated that almost 7,000 United Airlines workers will lose 50 percent or more of the benefits they had earned under their pension plans. Another 28,000 United Airlines workers will lose between a quarter and half of their benefits. Clearly, as a result, promises to those employees are not being kept. We are here to try to help make sure those promises are better kept, and this bill will help move in that direction.

The most basic building block of pension funding is the interest rate used to determine the present value of benefits to be paid for the plan in the future. This bill provides a permanent replacement for the 30-year Treasury rate which has been used basically for this purpose—that is, determining the interest rate—under current law.

Under this legislation, we will change that. It is true Congress did pass a temporary substitute last year. This bill is to enact a permanent interest rate calculation. This bill would extend the current temporary interest rate—a corporate bond rate—for an additional year, and then begin phasing in a permanent solution known as a modified yield curve of interest rates. Using a yield curve to determine the value of future benefit payments is more accurate than using a single interest rate because the yield curve recognizes that you get a different interest rate on a 5-year loan than, say, on a 15-year loan, and that is relevant because clearly more people work longer than others, so their retirement is a different period of time.

This bill simplifies that yield curve by breaking it into three segments—retaining the improved accuracy of a yield-curve measurement, while making it easier to apply the rates.

There are other key changes to the funding rules.

Unfunded benefit liabilities would have to be paid off over a 7-year period. Ideally, every plan would be 100 percent funded every year, but with fluctuating asset values and interest rates, that is not practical.

Large companies could base cost calculations on their own mortality experience. Workers in some industries do not live as long as the general population. That affects the cost of providing lifetime pensions and should be reflected in an accurate measurement of funding obligations.

The increased utilization of early retirement subsidies that occurs when troubled companies start downsizing is reflected in a special at-risk liability calculation. This will ensure that companies begin funding for subsidized benefits before it is too late.

The at-risk calculation is not a penalty imposed on companies when they are down and out. It is a reflection of increased costs. Someone has to pay those costs. The question is who. Should other companies pay through increases in PBGC premiums? Should workers pay through lost retirement benefits? Or should we, as I believe, require the company that made the promise fund the promise?

Failure to recognize the real cost of benefits is one reason for the system's funding problems. Another is that current law actually would have penalized many employers if they had contributed more to their pension plans.

Employer after employer has told us that we need to allow companies to contribute and deduct more in good times to build a cushion for bad times. This bill does that. It allows companies to deduct contributions that would fund the plan up to 180 percent of the cost of benefits already earned and allows employers to maintain a prefunding account with these extra contributions, which is sort of a rainy day fund, to help them meet contribution requirements when cash is a little tighter.

Our goal is retirement security, assuring workers that benefits they had been promised will be paid. There are two sides to keeping that promise—funding what is promised by the company and also not promising more than a company can afford to pay.

This bill limits increases in a plan's benefit formula if the plan is less than 80 percent funded. If a plan is less than 60 percent funded, then no more benefits can be earned until funding improves. Employers would have to fund up collective bargaining plans to keep these limitations from kicking in.

To make sure poorly funded plans do not become even more unfunded, this bill limits the portion of a benefit that can be paid in a lump sum if a plan is less than 60 percent funded. Lump sum payment of pension benefits can drain plan assets and hurt other workers. No benefits would be forfeited. The difference would be paid as an annuity. Retirement benefits are the largest asset of many workers, and they deserve timely, complete information on the state of their investment. Under this bill, most workers and retirees will receive detailed funding information within 90 days after the end of the year. That is new.

There was a time when pension plans paid monthly benefits at normal retirement age, usually based on years of service and some average compensation. The benefits were heavily weighted to workers who spent their entire career with one company. But in today's competitive world, that is not likely to be the future. Today many companies have moved to cash balance plans or other hybrid arrangements that are structured more similar to 401(k) plans, defined contribution plans. Benefits are earned more evenly over a worker's career and are more portable—easier to move from one job to another—than the traditional pension benefit. There has been uncertainty surrounding these plans, and litigation is ongoing. If defined benefit plans are to be a viable, attractive option in the future—and there is a real question whether they can be, and we are trying to make sure we can be—we must bring some certainty to the rules governing these arrangements. That is cash balance and hybrids.

This bill lays down the rules for moving forward with these plans. It recognizes the legitimacy of the basic design. It also provides protections for older workers when a traditional plan that rewards a lifetime of hard work is converted to one of these hybrid arrangements that is designed for a more mobile workforce. I think we have done a good job of protecting participants without putting too onerous a burden on employers.

Let me emphasize that this is a prospective provision; it is not retroactive. We do not step into the legal quagmire that exists with regard to the past. I want to make it clear that this bill offers neither side an inference as to interpretation of existing rules.

Some of the provisions in this bill that provide participant protections were in a bill we introduced in the 107th Congress, a bill designed to help prevent another Enron.

We all remember Enron. Thousands of workers lost their jobs. Because their 401(k) accounts were heavily invested in company stock, these workers lost most of their retirement savings as well. In February 2002, ''60 Minutes'' did a segment called ''Who Killed Montana Power,'' about my own State's experience with employers behaving badly and havoc wreaked on employees and their savings. The story reported one worker had lost $350,000 in his 401(k) plan because of the crash of employer stock. He certainly was not alone.

This is not to say company stock is a bad investment. Sometimes it is a wonderful investment. So this bill does not prohibit investment in employer stock. It simply puts the choice where it should be—in the hands of participants who are building up their retirement savings.

To help make that decision, we give workers tools to make good decisions and understand the consequences of their actions. We require more frequent benefit statements, and we provide a safe harbor to make it easier for employers to make independent investment advice available to plan participants if they want independent investment advice.

This bill has a number of other provisions that will make it easier for a worker to move retirement plans from employer to employer or from an employer plan to an IRA. There are also provisions that make it easier to administer retirement programs.

All of us are fortunate to have the benefits of the Federal retirement system. We have good pensions. We have good retiree health benefits, and I might add the PBGC does nothing to health benefits. This legislation does nothing to health benefits. It is only pension benefits. Health benefits is something that has to be addressed clearly and solidly at a not-too-distant date.

Imagine, however, if the Government all of a sudden said: Sorry, we can't afford that retirement, all you folks in Federal Government; we are going to cut it back; you will have to learn to live on less. That would be a problem, and it is a problem for many Americans.

That is what many of America's older workers and retirees are facing. Our steel workers, our airline workers, and many others have had the rug pulled out from under them. It is no one's fault, certainly not theirs. America's companies are competing in a cutthroat world. It is important to remember that. They have problems too.

What we are trying to do today is ask everyone to be more responsible and strike the right balance. We need a system where companies put enough money aside to pay for what they promise. And we need a system where workers who carry out their part of the bargain do not have to worry that a pension was more dream than substance.

This is a tough challenge. The bill is not perfect. It is a compromise. But I believe it is a good bill and should become law. The retirement security of millions of workers deserves our attention. I urge my colleagues to support keeping promises, to support protecting workers' retirement benefits. I urge my colleagues to support the bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Georgia.

AMENDMENT NO. 2582

(Purpose: To modify pension funding rules related to airlines, and for other purposes)

Mr. ISAKSON. Mr. President, I call up my amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. ISAKSON] proposes an amendment numbered 2582.

Mr. ISAKSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. ISAKSON. Mr. President, I ask unanimous consent that the following Senators be added to the amendment as cosponsors: Senators LOTT, COLEMAN, ROCKEFELLER, DEWINE, ALEXANDER, BENNETT, BURNS, HATCH, and CHAMBLISS.

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

Mr. ISAKSON. Mr. President, it is a privilege for me to introduce a Member of the Senate who has been instrumental in bringing this amendment to the floor, Senator COLEMAN from Minnesota. I yield him 4 minutes.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. COLEMAN. Mr. President, it is a pleasure to work with the Senator from Georgia. I wish to talk about a piece of this amendment. Before I do, I thank Chairman ENZI and Ranking Member KENNEDY for the work they have done on this bill. I represent Minnesota, Big 10 football, big ground game, not fancy passes. The Senator from Wyoming is not a rabbit, not fast on his feet, but, boy, is he solid, steady, and consistent. This is a great bill.

There is a piece particularly important to the folks in my State and actually throughout the country. This is not just about my State. Pension reform provisions relating to the airline industry take the burdens off the taxpayers. That is what this is about.

Let me be clear, when airlines cannot meet their pension obligations, the Pension Benefit Guaranty Corporation, PBGC, is saddled with the responsibility. Who is the PBGC? It is the American taxpayer. That is who is saddled with the responsibility.

In my State alone, Northwest Airlines is struggling to meet its obligations and make good on their promises of pensions to its employees. Minnesota has almost 22,000 people who depend on Northwest Airlines pensions. As the Senator from Montana said a minute ago, this is about promises made and about promises being kept.

The Federal law defining underfunded defined pension benefit plans is seriously broken and must be fixed. A number of airlines have already terminated their defined benefit plans in bankruptcy and transferred them to PBGC. Other carriers may well suffer the same fate.

I am not going to go into detail as to why it happened—stock market declines, low interest rates, September 11, record oil prices—but as a result, the deficit reduction contribution rules kick in. They require that Northwest and other carriers make massive additional contributions to its defined benefit plans that they cannot afford.

It is difficult to overstate how profoundly these DRC rules have impacted the funding of pensions. It would be akin to telling homeowners with 30-year mortgages that if the value of their homes drop below 80 percent of the purchase price, for whatever reason, their loan will be accelerated such that the balance will become due in 3 to 5 years. This is a problem. Common sense is not in play. This amendment provides common sense to pension laws.

This amendment provides some protection to the taxpayers. This amendment provides protection to the employees. They should get what they have worked for. Promises made, promises kept.

Northwest has worked with the labor unions. They developed a proposal contained in this compromise bill allowing them to proceed in a way to stop adding to the underfunding of airline plans by requiring airlines and their affected unions to freeze their plans, ceasing future benefit accruals, and protect the PBGC by freezing the PBGC guarantee. It would fix the broken DRC rules by extending the term of the pension "mortgage" from its current 3-to-5-year amortization period to a longer amortization period.

Under this proposal, retirees and plan participants would receive the benefits they earned to the date of the freeze. Retirees would be protected. In addition, the PBGC will be in better shape financially since its liability will be capped, and each airline payment that an airline makes to the plan will reduce that liability.

The bottom line is this: Northwest and other airlines are not seeking a subsidy, they are not seeking a bailout from the Government. Just the opposite. They are asking for a responsible alternative to current law that lets them pay their pension liabilities versus shifting those obligations on to a Government agency.

It is the right thing to do. It is a fiscally responsible thing to do. It is the right thing to do for the employers and taxpayers. I urge my colleagues to support this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. I yield myself 5 minutes.

Mr. President, I first thank Senator COLEMAN for his remarks and associate myself with those remarks. I particularly thank Chairman ENZI of the HELP Committee, as well as Senator KENNEDY. They have made sure that this stayed alive during the course of this session.

I thank Senator GRASSLEY and Senator BAUCUS for the efforts they made on pensions and particularly thank Senator COLEMAN and Senator LOTT for their untiring efforts to bring this to reality today.

I wish to go back to one thing Mr. COLEMAN said briefly by acknowledging what brings us to this point in terms of airlines. In the past 5 years, there have been five things that have happened, none of which would be in control of the aviation industry: the decline of the stock market early in this decade, the tragic events of 9/11 which grounded American aviation, the unprecedented historically and continuously low interest rates, the hurricanes that hit the United States and shut down refineries and petroleum and closed major airline markets for transportation, and not the least of which is petroleum going to $70 a barrel and aviation fuel tripling in its cost.

If we take all of those and combine them with the constraints of the current formula on pensions, one can understand why the aviation industry has had the difficulties it has had and how employees of legacy airlines will lose their pension benefits unless we adopt reasonable and appropriate amendments such as the amendment we propose today.

Very simply, this amendment does a couple of things. One is for the aviation industry. It allows the amortization of the obligation over a 20-year period of time, an amount that is manageable, an amount that is doable, an amount that for all intents and purposes will ensure employees will get the pensions they have earned. Failure to adopt this amendment will almost guarantee that those employees of airlines such as Delta, Northwest, and others will not ultimately get the pension benefits they have earned. The major consequence of that will be the taxpayers of the United States of America, through their surrogate, the PBGC, the Pension Benefit Guaranty Corporation, will have the additional liability those pensions will thrust upon the PBGC.

In this amendment, we have met the challenges the aviation industry has before it. We have looked responsibly at the right formula and the way in which to calculate that formula to ensure the benefits are paid. We have addressed the concerns of the industry and its individual airlines, all of which have similar unique but some different problems.

In particular, what we do is give hope for the employees to get their benefits. We cap the liability of the PBGC, and we ensure that one of the most important elements of the U.S. economy, the aviation industry, is not forced by laws that are out of sync to unfund, defund, or jettison their pension plans for the employees who have made those airlines fly throughout their careers and throughout their history.

We have some time remaining on our allocation for the amendment, to which Senator LOTT was to speak but was called away. I reserve the remainder of our time on the amendment for Senator LOTT upon his return.

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

Who yields time?

The Senator from Maryland.

Ms. MIKULSKI. I ask unanimous consent to speak up to 10 minutes under the time controlled on the Democratic side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Ms. MIKULSKI. I note that the distinguished chairman of the Finance Committee has come to the Chamber, and I know he is eager to speak on the bill and has many demanding responsibilities.

I compliment both Senators ENZI and KENNEDY, as well as Senators GRASSLEY and BAUCUS, on the outstanding job they have done in developing this legislation and putting two bills together. Pension reform is one of the most important issues facing the American people, and Congress must rise to the challenge of passing legislation. Reform is needed to protect workers' pensions, to protect good-guy businesses, and also to protect the American taxpayer, who often ends up being the safety net for so many pensions.

The bill before us today is generally a very good bill. Yes, I do see some yellow flashing lights about two provisions of the bill regarding the use of credit rating and something called smoothing. That is why Senator DEWINE and I had originally wanted to offer an amendment to avoid the unintended consequences that might push companies to drop their pension plans and leave workers in desperation.

In recent days, we have made a lot of progress. Senator DEWINE and I have had very constructive conversations with Senators GRASSLEY and BAUCUS. Senators ENZI and KENNEDY have been particularly helpful in brokering a resolution to some of the issues. The process seemed far less ominous when their wise heads and hands got involved in it. Their help was invaluable in ironing out some of the wrinkles. I believe we have a commitment to work together in conference to address our concerns because I truly believe that the Senate bill is in many ways a superior bill to those in the House. This is why I am eager to see this bill move ahead.

Throughout my career, everyone knows I have been fighting for the little guy. This is no different. Pensions are part of the American dream. People believe that if one works hard, they can get ahead, but also if they work hard, they are going to have a pension. A pension has to serve as one of three legs of an increasingly wobbly stool supporting older Americans in retirement. That is why we are so concerned about the fragility of so many pension plans in our own country.

We have worked from the beginning on a bipartisan basis. Senator DEWINE and I are the chair and ranking member of the Subcommittee on Retirement Security and Aging in the Health, Education, Labor, and Pensions Committee, of which Senator ENZI is the chair and Senator KENNEDY is ranking. We held a series of hearings, and they were outstanding. I wish the American people could have seen them. They were content rich, and they were also characterized by civility, particularly among members. The hearings demonstrated the need for comprehensive reform that addressed not just single-employer plans, but multi-employer plans and cash balance plans as well.

What I like about the bill is that we have a smart bill, we have a good bill, and we have a bipartisan bill. When we looked at it, part of our bipartisan framework was to let us do no harm either to the people who need pensions or to the people who provide the jobs and the business. We need to make sure workers do not lose their pensions. We had to look out for good-guy businesses that are doing everything they can to fund their pensions. We also had to protect the taxpayer and ensure that the Pension Benefit Guaranty Corporation was solvent. It must not be used as a dumping ground for those companies that want to walk away from their pensions even though there was no need to. I believe we accomplished so much in those principles: do no harm, protect the worker, protect good-guy businesses, and look out for our taxpayers.

When the HELP bill was merged into the finance bill, many improvements were made, but there were several provisions that, as I said, had yellow flashing lights. One is the issue of credit rating and the other is the issue of smoothing.

There are those within the HELP Committee—and my colleague, Senator DEWINE, and I count ourselves as two of them—who are concerned that a company's credit rating is being used as an indicator of its pension plan's health. Companies with bad credit ratings could be forced to put in extra payments, even if they had been responsible in making regular payments to their generally well-funded plans.

Credit rating is a blunt instrument. Data from Moody's, one of the Nation's leading credit rating companies, should help explain this. Moody's looked at companies that were sub-investment grade and followed them for a full 20 years. After these 20 years, a majority of the companies had not defaulted on their bonds. This tells us that the companies had not gone bankrupt.

Some people are worried that weak companies will go into bankruptcy and dump their pension plans. The facts say otherwise: a majority of companies in junk-bond status won't go bankrupt. Forcing struggling companies to make new draconian payments could end up pushing many companies to terminate their plans or enter bankruptcy. We have to take that into consideration.

This means in fact this language would bring about exactly what it is designed to protect against.

Auto manufacturers and tech companies, many of whom are just now regaining their financial stability, could be among those hit hardest by these provisions. We should encourage these viable businesses to continue making contributions to their plans, not push them into bankruptcy.

Such an unintended consequence could well cost many Americans their jobs and their pensions. Senator DEWINE and I wanted to make a targeted change to the bill to help prevent this, substituting the actual measure of a plan's health in place of credit ratings.

The other issue that concerned me is limitations on smoothing. Smoothing is the process of averaging estimates of assets and liabilities and is used because pensions are by nature long-term investments. Smoothing improves predictability and makes it easier for companies to plan their budgets around their pension contributions.

Under current law, companies can average estimates of assets and liabilities over 4 or 5 years to smooth fluctuations in the stock market and in interest rates. Senator DEWINE and I wanted to tighten this to 3 years, which is more restrictive than current law but more effective than the merged bill's one year. Numerous experts have said that one year is just not enough.

I also want to highlight a key transparency provision in the merged bill that requires companies to issue a snapshot, unsmoothed picture of their assets and liabilities each year to participants and the PBGC. This new disclosure addresses the criticism that smoothing can hide problems in plan funding for several years. Now, many problems should be apparent just 90 days after the end of the plan year.

Last Wednesday, the House Ways and Means committee passed Chairman THOMAS' bill. Like the HELP bill and like Chairman BOEHNER's bill, the Ways and Means Committee didn't include credit rating and allowed 3 years of smoothing.

I continue to feel strongly about the need to make changes to the legislation before us today. I also believe it is imperative to continue moving through the legislative process so we can pass this much needed reform. The Ways and Means Committee has acted, and we now know that the House of Representatives is sure to have a good position on these issues. There are too many other good provisions in this bill that we must pass.

I am not going to go into all the details of the bill. I note that the chairman of the Finance Committee wishes to speak. We want to move this legislation. I want to pass this bill so we can get to conference. We want to say to the House: They sometimes think the Senate is the body that talks more than it gets done. We challenge the House to pass this bill before they leave the way the Senate is going to do it and to do it the way we did it—working on a bipartisan basis.

I cannot say enough about the appreciation I have for Senator DEWINE of Ohio, who was the chairman of the subcommittee. We worked together, and we really looked out for those jobs that have a defined benefit plan, particularly in the older manufacturing corporations. It was a delight to work with him, and I look forward to that on many other issues.

Senator ENZI, with his accounting background, provided a steady hand and again has worked to create a culture and climate of civility that is becoming a hallmark of our committee. I have also appreciated working with Senators GRASSLEY and BAUCUS to achieve the melding of two very good bills. We thank them and we thank their staffs for their collegiality and consultation.

I look forward to voting for this bill. I look forward to being a conferee, and I look forward to bringing a bill back to the Senate not only that the Senate can be proud of but that people who need pensions can rely upon and that business does not fear. Government must be part of the solution rather than the problem.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Maryland, Ms. MIKULSKI, for her tremendous work. She showed such tremendous concern for the workers and the companies, both of which are multiple in her State, and she did a great job of brokering for both to make sure the businesses would continue and the employees would get their pensions.

The Senator showed the depth of understanding that she already had and that she got from the hearings which were conducted. We appreciate the bipartisan way she has worked on this to get us to this point.

I yield to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, before I give my reasons to my colleagues for why they should support this legislation and why it came out of my committee, there are several thank-yous I would like to give, first to Senator BAUCUS because this is truly a bipartisan bill that came out of committee. In fact, I think it came out totally unanimous. Over a period of many months working with Senator BAUCUS, we were able to put something together to get that kind of bipartisan support.

Then later on, the HELP Committee reported a bill. There was extremely great cooperation between Senator ENZI and Senator KENNEDY with Senator BAUCUS and me. I do not say this tongue-in-cheek, I say it as a matter of fact: I think if one can get Senator ENZI and Senator GRASSLEY together on one side of the aisle and Senator BAUCUS and Senator KENNEDY together on the other side of the aisle, there ought to be something that ought to pass this body.

I also lend compliments and support for helping move this bill along to Senator MIKULSKI and Senator DEWINE because they had a very controversial amendment—they may not have thought it was controversial—and we were able to work out some understandings beyond the action on this floor to accomplish that. So we would not be here today doing this bill without Senator MIKULSKI and Senator DEWINE's cooperation. I thank the Senator from Maryland for that, and Senator DEWINE as well.

I am very pleased that the Senate now is turning their attention to what we call the Pension Security and Transparency Act, 2005. It is a bipartisan bill, and I support it. I think every Member of the Senate ought to be proud to support this bill and, of course, only a rollcall will show that.

This is a bill that is about one thing—improving the retirement security of all Americans. It will improve Americans' retirement years in many different ways. Much of the public focus on this legislation has been on the comprehensive pension funding reforms that are in the legislation. Those reforms are very important, but before I talk about those, I wish to spend a couple of minutes talking about other important provisions in the bill.

No. 1, the bill represents a completion of the post-Enron retirement plan reform that I have worked out with my good friend Senator BAUCUS, Democrat ranking member. We all remember that when Enron spiraled into bankruptcy and the value of that company's stock evaporated, Enron employees had 401(k) plans locked in Enron stock. They had no chance of diversifying their 401(k) portfolios, and they were blocked from selling Enron stock at the time top executives were cashing that stock out with big gains for them. This bill would say that Enron practice is unacceptable for any company in the future. Employees should not be forced to stuff their 401(k) plans with company stock. Diversification is the most fundamental principle of sound investment strategy. The bipartisan legislation before us today then guarantees that employees have the right to diversify their 401(k) accounts.

This bipartisan bill also seeks to increase savings by adopting new rules to promote automatic enrollment in 401(k) plans. Very often, I am afraid, the hardest dollar to save is that first dollar. Once people begin to save, it can become a habit that lasts a lifetime. Automatic enrollment means that saving that first dollar will be easier, less redtape, and it means that millions of Americans then will be saving many times more than what they save today. Obviously, every month we get statistics on savings that say Americans are almost, throughout the entire globe, the ones who save the least.

The bipartisan bill before us today also simplifies retirement plan rules, making it easier and less burdensome for employers to give retirement plans to their employees. These types of changes will be particularly helpful to small businesses, which are often discouraged from sponsoring a retirement plan because of the costs, administrative costs particularly, and the redtape burdens. The bipartisan bill before us today would allow small businesses to combine a defined benefit plan with a 401(k) plan, and they would do this into one simple plan called DB(k). This type of combined plan will give employees the best of both worlds at the same time.

Speaking of combining the best of both worlds, the bipartisan bill we are considering today provides long-needed clarifications that cash balance and other types of hybrid pension plans are not inherently age discriminatory. Hybrid pensions combine positive features of both the traditional pension plan and the defined contribution plans. These plans have long provided meaningful retirement benefits to employees. Today we will help to lift the cloud of legal uncertainty over these plans. At the same time, we also ensure that the rights of participants are protected and that the plans truly do meet the needs of today's mobile workforce by requiring faster vesting of employees' benefits in those particular plans.

Finally, then, I will refer to the pension funding changes in this bill, those things that really have gotten the most attention and maybe are somewhat controversial. This bill honors a promise that we made way back in 1974, before I came to Congress, when the law governing plans, called ERISA, was enacted. That promise was made that the pensions of rank-and-file employees should not depend on the financial solvency of their particular employer. ERISA, the law, says that it is OK for a nonqualified pension of senior management to be exposed to the company's risk of bankruptcy. But then when it comes to the rank-and-file employee, people who probably had as much to do with making the company as the manager, people who worked hard all their lives in hopes of a good retirement, and a pension being a part of that good retirement—those people's golden years should not be ruined because of their employer falling on hard times.

ERISA is meant to protect against that, and we are making some changes to make sure that ERISA does what it was originally intended to do in 1974, without using the taxpayer as a possible backstop. ERISA, I hope people believe, has worked pretty well for the last 30 years. But we found that in recent years there are times that the promise of ERISA is not honored. So, today, we are here to fulfill the promise and to let the American people know that if you have been promised a pension, we are going to make sure that you receive it.

The pension funding reform in this bill also stands for another bedrock American principle that if you make a promise, you are responsible for your own promise. We all know that most companies fund their pension plans in a very responsible manner. Unfortunately, there are a few—and it only takes a few bad apples to ruin the whole barrel of apples—but a few bad apples who have abused loopholes. Those are loopholes that are in the current rules to avoid funding pensions in a way that shows that they are responsible for their own promises.

Those few who have taken advantage of these loopholes have often, in the end, dumped their pension plans on the Pension Benefit Guarantee Corporation, the Government agency that was set up to provide the insurance; let's say in a sense like the Federal Deposit Insurance Corporation does, for savers in bank accounts. These companies have essentially said we cannot pay our bills. Someone else is going to have to pay them for us. That is the PBGC.

Unfortunately, the people they want to pay are other employers who have done the right thing and have guaranteed their employees the pensions they promised. They are able to deliver on those promises. Those employers who are honest and upright get stuck with the bill, in the form of higher premiums to the Pension Benefit Guarantee Corporation.

I think we would all agree that is not fair, and it is no way to run a pension system. Even more unfair is the concept of a taxpayer bailout of the PBGC. One thing that I am for in this legislation is the attempt to make sure this does not happen, that the taxpayers are not laid bare for this obligation that the corporation ought to pay, but that goes back to the irresponsible actions of a few bad apples who do not fund their pensions adequately. I do not want another savings and loan situation like we had in the late 1980s coming out of bad policy in the PBGC.

As we have watched the financial condition of this Government corporation deteriorate rapidly in recent years, the prospects of such a bailout become increasingly real—in other words, a taxpayer bailout, a savings-and-loan-type bailout that we do not want to let happen. In other words, we ought to show that we have learned a lesson, and hopefully this bill is a good step showing we have learned a lesson.

The bipartisan bill we have before us today will reverse the decline over time by improving pension funding and bringing additional premium revenues into the corporation, the Pension Benefit Guarantee Corporation. This bipartisan bill represents a huge leap forward for retirement security.

Let me say I am cognizant of the fact that we in Congress are saying that it is a huge leap forward. I think it ought to be known to all of my colleagues that the President and his staff, who were interested in this legislation, would say it is not good enough in this direction and maybe there are opportunities, hopefully along the way, for improvement.

I think, once again, in closing, I need to give thanks, as I have already given. I start with Senator BAUCUS for his dedication in this legislation. He has been a great partner to work with me to advance this bill to where it is now. I also thank Chairman ENZI and Senator KENNEDY. I think we have had a partnership working together as two committees on legislation because we share jurisdiction. I have to commend their dedication to important reforms that they put in their bill. They have been tireless in their efforts to get us to this point. I look forward to working closely with them and all my colleagues in the Senate as we continue to work towards the goal of getting this bipartisan legislation to the President for his signature.

I yield the floor.

Mr. ISAKSON. Mr. President, I would like to turn the wheel back on our time allotted to the Isakson amendment and yield that time to the Senator from Mississippi and, in so doing, repeat my acknowledgment of my thanks to Senators GRASSLEY, BAUCUS, ENZI, and KENNEDY for their cooperation in allowing this amendment of the aviation portion of the pension bill to come before the Senate today, and the distinguished Senator from Mississippi for his untiring effort to bring us to this point today.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. I thank the distinguished Senator from Georgia yielding me that time. Might I inquire, what is the time remaining?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. LOTT. Mr. President, first of all, I point out this is a classic example of how we can work together to get an agreement to move needed, necessary, balanced legislation. There have been a lot of glitches along the way, but there has been persistence by the Finance Committee and by the HELP Committee to report out the legislation, to have hearings, to listen to the arguments from the administration, from the private sector, from those who are experts in this field of the PBGC. I am very proud of the work that was done by the chairman of the Finance Committee, working hand in hand with the ranking member, Senator BAUCUS, to get the legislation passed and to allow an amendment in which I was very interested dealing with the airline pension situation. They could have said "don't do it" or "we will do it later," but they allowed the process to work its way through.

Then, also, I have to give tremendous credit to the chairman of the HELP Committee, Senator ENZI. He did not give up on it. He was dogged and he was working on trying to get this unanimous consent agreement on how we consider this legislation, and our leadership on both sides of the aisle were able to come together. There were a lot of people who had amendments they wanted. They had objections, there were holds here, holds there, yet here we are. So I hope we can look at this and see if we cannot do this again in the future.

There is no question we need reform in this area. There is real exposure across the board. American workers all over this country, and management, and the leadership in the administration or in the PBGC are very worried about where we are headed with these pensions. Are we going to keep our commitment to the workers and to the people involved in these pensions? We have an exposure, according to an article this morning in the newspaper, this PBGC organization, of approximately $26 billion.

Where are we heading in this regard? Part of the problem with regard to pensions is the requirements that the law places on them are inverted. If you get into difficulty, if you are losing altitude, your payments to the agency, PBGC, go up, making it more likely you are going to continue to plunge into the ground. Conversely, if you are doing well, you pay less. How did we ever allow the law to get into that shape? Reform clearly is needed. If we do not do it, and do it in the right way, more companies are going to go into bankruptcy and are going to wind up dumping their pensions. The people who earned these pensions or had agreements for their pensions are going to get less than they thought they would get or in some cases even less than they should be getting.

We can debate whether or not these pensions have been too inflated, but we have to transition. I personally think we have to get away from these defined benefit plans. We have to go to the defined contribution plans. But I think this legislation is a good compromise. We need it and we certainly should get it done before we complete this session of Congress.

I also congratulate Senator COLEMAN from Minnesota for working on the aviation provisions, and especially Senator ISAKSON, the great Senator from Georgia, for his efforts to stay behind this legislation and to offer the amendment that is going to be voted on before we complete the legislation.

The language in the bill says airlines that freeze their defined benefit plans can amortize any funding shortfalls over a 14-year period. That was a compromise agreement. The chairman had some concerns about what that number would be. The language we have from Senator ISAKSON is slightly broader than that, broader than the base bill.

It allows airlines that freeze their plans and airlines that prefund their plans 20 years over which to amortize their funding shortfalls. I think that is the right number. I would like to have seen it more than 14. I support this amendment. I must say that I know it is critical to some of our airlines that we have this language. I have worked on the language in the pension reform package on airlines. I have worked on supporting this amendment, and I have worked on checking the votes. I want the RECORD to show, in case there is a voice vote, that I believe there are probably over 80 votes in the Senate that would be for this amendment.

I want to make it clear for the future and for the RECORD and for the conference that this amendment is going to be handled in the way it is going to be handled because of the overwhelming support it has. We could have a lot more resistance to it by the leadership, but they continue to be reasonable in their handling of this legislation.

I support the Isakson amendment. I certainly believe it will be accepted by an overwhelming indication of support in the Senate, and that is the way it should be.

I believe, as a result of this legislation, that companies—particularly airline employees—the PBGC, and ultimately, most importantly, the U.S. taxpayer will be better off.

This bill is not perfect. It will probably be better as we go along through the conference, but it will never be perfect. But it is a major step forward and one we should be proud of. It is not the kind of thing you will read about in the local newspaper or, congratulations, you did a good job, unless you are the hub of an airline. It is not something you are going to read a lot about in most places in Wyoming. But this is the right thing to do, and the exposure is cataclysmic if we don't deal with it.

I am delighted to support the legislation and the Isakson amendment.

I yield any remaining time at this point. I thank the Senator for yielding.

Mr. ROCKEFELLER. Mr. President, I am very pleased to offer an amendment with my colleagues: Senator ISAKSON and Senator LOTT. Our amendment provides important pension relief to the airline industry, which has struggled financially as a result of the September 11 terrorist attacks and dramatically higher fuel costs. In the last few years, we have seen United Airlines and US Airways terminate their pension plans and turn over their liabilities to the Pension Benefit Guaranty Corporation. Our amendment is designed to avoid this unhappy outcome for airlines that are still struggling with large pension debts.

Throughout the work on this legislation, my goal has been to protect the employees and retirees who have worked hard to earn retirement benefits. Whenever underfunded pension plans are dumped on the PBGC, everyone loses. Employees and retirees lose benefits that they deserve. Companies struggle with sour employee relations. And the PBGC and ultimately, perhaps someday the taxpayers—gets stuck with a bill for the portion of the pensions that is guaranteed but not funded.

I am very appreciative of the cooperation that we have had from the bipartisan leadership of both the Finance Committee and the HELP Committee. The legislation we are considering today would allow struggling airlines to pay off old pension debts over a 14-year period using reasonable interest rate assumptions. Unfortunately, given the rising fuel costs and the need to attract bankruptcy financing, the relief provided in this bill is insufficient to help Delta Airlines. That is why the Isakson-Rockefeller-Lott amendment, which extends the repayment period to 20 years is so important. The amendment would also allow airlines, such as American and Continental, to benefit from relief without terminating their pension plans, as long as any new obligations were fully funded.

I am very pleased that this amendment has the support of Delta, Northwest, Continental, and American airlines. This amendment does not pick winners or losers within the airline industry. Rather, it focuses on maintaining defined benefit pension promises, and any airline that offers defined benefit plans would be able to benefit from this relief.

I understand the skepticism of Senators who are concerned that in spite of any relief Congress provides, airlines may still terminate their pension plans. I cannot say that this is an unreasonable fear.

However, the amendment we are offering would make it more difficult for airlines to dump their plans. Without sufficient funding relief, airlines may convince a bankruptcy court that the plans must be turned over to PBGC in order for the airline to emerge from bankruptcy. However, if the law requires reasonable-sized payments, stretched out over 20 years, an airline's argument that it cannot make such payments loses credibility.

As a West Virginian, I have seen the tragic consequences of underfunded plans. I am not interested in letting employers off the hook for pension promises they made to workers.

The point of this amendment is to make sure that employers fulfill their obligations. In light of the current financial situation of several airlines, it is unrealistic to expect them to maintain their pension plans under normal funding rules. The reality of the situation calls for reasonable funding relief in order to make sure that the companies continue to make substantial payments to their plans. Providing a 20-year period for airlines to repay their pension debts is the best way to protect workers' benefits and reduce unfunded liabilities covered by the PBGC.

For the sake of the airline employees who have earned a secure retirement and for the sake of the millions of workers who depend on a strong PBGC, I ask my colleagues to support the Isakson-Rockefeller-Lott amendment.

Mr. CHAMBLISS. Mr. President, I rise today in support of Senate amendment No. 2582 offered by my good friend Senator ISAKSON to S. 1783, the

Pension Security and Transparency Act of 2005.

The retirement security of millions of Americans participating in single employer defined benefit pension plans depends on employers keeping their pension promises. Unfortunately, in recent years those promises have not been kept. Defaults of pension plans in the airline, steel and auto-parts industries have raised concerns about the health of existing plans and the possibility of a taxpayer bailout of the Pension Benefit Guaranty Corporation, PBGC.

The current system does not ensure that pension plans are adequately funded. When under-funded plans terminate, as several have done recently, they place an increasing strain on the pension insurance system. As of September 30, 2005 the PBGC showed a deficit of $22.8 billion for pension plans sponsored by a single employer. While the PBGC will be able to pay benefits for years to come, the solvency of the pension insurance system is in jeopardy. It is estimated that the PBGC will run out of cash within the next 20 years.

The airline industry in particular has been faced with its own specific set of economic challenges. The attacks on September 11, 2001 coupled with a stock market decline and record oil prices have placed a significant burden on the airline industry, forcing them to make tough choices. The unfortunate reality of our current economic climate is that some businesses, particularly the airlines, are taking devastating financial losses as a result of unforeseen circumstances.

As many of my colleagues know, Delta Airlines is headquartered in my home State of Georgia. Delta has a longstanding history of service to airline passengers throughout the world and has been a great corporate citizen for the State of Georgia. Delta's some 31,000 employees, like many other hardworking Americans, have devoted years to working for companies like Delta. We need to ensure that they receive the pension benefits they were promised and deserve.

The Joint Committee on Taxation estimates that this amendment would raise $14 million over the period 2006–2010 and $30 million in Federal revenues over the period 2006–2015. Changing the amortization period for airline pension plans such as Delta's, from 14 years to 20 years would take the burden off the PBGC while ensuring that the thousands of workers employed by the airline industry would receive the benefits that they have earned.

This common sense amendment, of which I am a cosponsor, will not relieve the airlines of pension liability, nor will it prohibit airlines from meeting pension obligations sooner than 20 years. It discourages airlines from relying on the PBGC and the taxpayers' dollars by allowing them time to fulfill their pension obligations. This amendment complements the purpose of the overall pension reform bill by taking the necessary steps to ensure that American workers receive every penny they have earned, while holding companies accountable and simultaneously reducing the burden on the PBGC.

American workers deserve the security of knowing that their pensions will be there when they retire. I also want to help ensure the job security of the employees of great companies like Delta, while allowing passengers and our economy to benefit from the continued use of our airlines. As we continue this debate, I am committed to passing meaningful pension reform.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Montana.

Mr. BAUCUS. Madam President, I understand the majority manager favors the Isakson amendment. I control time on this bill, as well as the Senator from Georgia. I support the amendment. Given all of that and the support on both sides, I am prepared to yield back the remainder of time we have on this amendment so we can then prepare to vote on the amendment.

The PRESIDING OFFICER. All time is yielded.

Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2582) was agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote.

Mr. ENZI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ENZI. Madam President, I yield to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, first, let me congratulate my colleague from Georgia for this amendment, as well as my colleague from Mississippi.

I also commend the chairman of the Finance and the HELP Committees and ranking members Senators GRASSLEY, BAUCUS, ENZI, and KENNEDY for their hard work on the legislation that is before us today, for their hard work in forging the compromise pension reform bill.

While I appreciate all of the hard work that went into this legislation that is before us today, I would like to discuss some grave concerns that I have about this bill. Historically, a defined benefit pension has been the cornerstone of a worker's retirement, along with personal savings and Social Security. However, with the movement away from defined benefit plans and personal savings, many Americans are relying mainly on Social Security for their post-retirement income.

That is a very disturbing trend. This is an alarming trend. The defined benefit pension system is an important part of a worker's retirement, but unfortunately, an increasingly rare one. The number of defined benefit plans has decreased from over 114,000 in 1985 to just over 28,800 in 2004. Since 2001, almost a quarter of Fortune 500 companies have frozen or considered freezing their defined benefit plans.

As chairman of the Subcommittee on Retirement Security and Aging, along with my good friend and colleague from Maryland, Senator MIKULSKI, I chaired a hearing to examine the issue of PBGC funding and the effect that reforms to shore up the PBGC may have on the defined benefit system, which is the financial backbone of many workers' retirement. At that hearing, we heard testimony acknowledging the need to strengthen pension funding rules, but we were warned that going too far would force employers to leave the defined benefit system through freezes and terminations of plans, and in the worst case, could force a company into bankruptcy.

There is no question that something must be done to maintain the solvency of the PBGC. The agency has estimated that its deficit is $22.8 billion and CBO projects a much larger deficit than that over the next 10 years. A taxpayer bailout of the PBGC is a terrible option. But, I also do not believe it is a good option to drive companies out of the defined benefit system. It is important that we balance rules to improve funding of plans without going too far and forcing plan sponsors to abandon their plans or declare bankruptcy.

I believe that the bill that we passed out of the HELP Committee in September by an 18 to 2 vote struck such a balance. The Defined Benefit Security Act amended the funding rules so that companies would fully fund their plans, while at the same time increase the premiums that companies pay to the PBGC to better fund the pension insurance system.

Unfortunately, I believe the bill that we have before the Senate today is a step backwards from the HELP Committee bill. While I commend Chairmen ENZI and GRASSLEY and ranking members KENNEDY and BAUCUS for their efforts to reach a compromise on two very different bills, I am seriously concerned about the impact several of the provisions of the compromise bill will have on plan sponsors and participants. I am concerned about the impact it will have on job creation in the future and on job creation.

First, I am concerned about the 3-year transition to the new funding rules, including the new 100 percent funding standard. For many companies, this will require a significant increase in pension funding in a short amount of time. I also have concerns about decreasing the amortization period from 10 years to 7 years. My biggest concerns, however, are credit rating and smoothing. Senator MIKULSKI and I proposed an amendment that would replace S. 1783's provisions on credit rating and smoothing with the provisions of the HELP bill.

Using credit ratings to determine plan funding would result in a loss of jobs. It is a simple calculation. Using a company's credit rating will put additional pressures on a company experiencing a downturn in their business cycle. They will have to put more money into their plans at the very time they cannot afford to do so. These are funds that could be used to modernize facilities or roll out new product lines—activities which could help a company actually pull out of a downturn.

The at-risk rules can increase a company's required pension contribution by hundreds of millions of dollars, and in some cases, by billions of dollars. Struggling companies experiencing a business downturn cannot absorb that type of additional burden. There is little doubt that if this legislation becomes law, far more struggling companies will be forced out of business as a result of their pension obligations. Their employees will lose some of their pension and their job. This is not in anyone's interest. This hurts the employees, the plan, the company, and the PBGC. We best protect the PBGC and retirees by helping struggling companies recover, so that they can contribute more when they are healthy.

I would also note that the proposed DeWine-Mikulski amendment would have increased the smoothing period for asset valuation and interest rates to three years from the twelve months included in S. 1783.

One of the clearest messages that we have received from the business community is that they need to be able to predict their funding obligations so that they can make necessary business plans. If they cannot predict those obligations with reasonable certainty, they will not maintain defined benefit plans.

This is not idle speculation. As I stated before, companies have been leaving the defined benefit plan system in droves and the reason given is the unpredictability of the funding obligations. So, what should we expect if this bill, in its current form, becomes law, dramatically limiting the smoothing rules and thus limiting predictability? We can expect an even faster exodus from the defined benefit plan system. That would be very sad news for the retirement security of millions of Americans.

In conclusion, while the changes that the DeWine-Mikulski amendment sought to make were not incorporated in the bill before us today, both Senator MIKULSKI and I will be conferees and have the opportunity to help shape the final bill in a way that can be beneficial for participants, plan sponsors and the PBGC. And, I look forward to working with my colleagues on the conference to work on these issues.

Quite frankly, what is at stake is the future of businesses—real companies. What is at stake are future jobs in our home States, whether it be Maryland, whether it be Ohio or the other States in the Union. What is at stake is job creation in the future. What is at stake is job retention now.

The issues that Senator MIKULSKI and I have brought before the American people and before the Senate will have to be addressed in conference because the issues are simply about jobs.

I thank the Chair. I yield the floor.

Mr. BAUCUS. Madam President, I see that the ranking member of the HELP Committee is now on the floor and also the Senator from Hawaii, Mr. AKAKA. I wonder if the Senator might allow the ranking member to speak, and then we could be at a point to bring up the amendment of the Senator from Hawaii.

Under the unanimous consent agreement, I believe we have about 30-some minutes remaining. I yield as much time as the Senator from Massachusetts desires. When the Senator finishes, I urge the Presiding Officer to recognize the Senator from Hawaii for an amendment which he has to offer.

Mr. KENNEDY. If the Senator will withhold, my friend is ready to go and make his presentation. After that presentation, if I could then have a chance perhaps to talk about the importance of this legislation, the history and development of it, that would be agreeable with me.

Mr. BAUCUS. Whatever works out for the two Senators.

Mr. KENNEDY. That is fine.

I thank the Senator from Montana for his typical courteousness, and I welcome the opportunity to hear the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Madam President, I thank the Senator from Montana and the Senator from Massachusetts for providing this time for me.

AMENDMENT NO. 2583

Mr. AKAKA. Madam President, I call up my amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Hawaii, [Mr. AKAKA], for himself and Mr. SPECTER, proposes an amendment numbered 2583.

Mr. AKAKA. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To compute the actuarial value of monthly benefits in the form of a life annuity commencing at age 60 for certain airline pilots)

At the end of title IV, add the following:

SEC. 4___. AGE REQUIREMENT FOR EMPLOYERS.

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)) is amended in the flush matter following paragraph (3), by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, paragraph (3) shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(b) MULTIEMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022B(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322b(a)) is amended by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, this subsection shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable on or after the date of enactment of this Act.

Mr. AKAKA. Madam President, I rise today to offer my amendment to the pension bill to correct an injustice. I want to thank my cosponsors, Senators SPECTER, FEINSTEIN, SALAZAR, and INOUYE, for working with me on this amendment. I also want to thank the cosponsors of my stand-alone bill S. 685, which include Senators ISAKSON, KENNEDY, HARKIN, OBAMA, DURBIN, SALAZAR, and FEINSTEIN.

The Federal Aviation Administration, FAA, requires commercial airline pilots to retire when they reach the age of 60. Pilots are therefore denied the maximum pension benefit administered by the Pension Benefit Guaranty Corporation, PBGC, because they are required to retire before the age of 65. This significant reduction in benefits puts pilots in a difficult position. With drastically reduced pensions and a prohibition on reentering the piloting profession because of age, many pilots are subjected to undue hardship. For plans terminated in 2005, the maximum benefit for someone that retires at 65 is $45,614 a year. For those who retire at 60, the maximum is $29,649.

While I believe that Congress needs to address the issue of underfunded pension plans, I believe that it is also important for us to address this inequity. We must adopt this amendment to assist pilots whose companies have been or will be unable to continue their defined benefit pension plans. My amendment will slightly alter title IV of the Employee Retirement Income Security Act of 1974 to require the PBGC to take into account the fact that pilots are required to retire at the age of 60 when calculating their benefits.

If pilots want to work beyond the age 60, they must request a waiver from the FAA. It is my understanding that the FAA does not grant many of these waivers, and I have even heard from some pilots that the FAA has never granted these waivers. Therefore, most of the pilots, if not all, do not receive the maximum pension guarantee because they are forced to retire at age 60. Pilots already lose substantial amounts of their promised pensions when the PBGC takes over their pension plans, but this needless penalty makes the pension cuts even harder to adjust to after a termination.

This amendment would benefit US Airways and United Airlines pilots in addition to other legacy carriers whose pensions were absorbed by the PBGC. In my home State of Hawaii, I have 91 United and US Airways pilots in the Air Line Pilots Association data base. I also have 305 active or retired Aloha Airlines pilots in Hawaii. Aloha Airlines recently filed to terminate its pension plan. Other States, such as North Carolina and Virginia have 1,064 and 1,014 United and US Airways pilots respectively. As I look at the financial difficulties confronting Delta Airlines and Northwest Airlines, I am troubled by the prospect of even more pilots losing their plans and being subjected to this unfair penalty.

I ask unanimous consent a letter of support from the Air Line Pilots Association be printed in the RECORD.

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

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
Washington, DC, September 28, 2005.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: On behalf of the 64,000 members of the Air Line Pilots Association, I am writing to express our strong support for your legislation, S. 685, The Pilots Equitable Treatment Act, which would put airline pilots on an equal footing with non-pilots with respect to guaranteed benefits payable from the PBGC if a defined benefit pension plan is terminated. I also understand that you plan to offer the language of S. 685 as a floor amendment to pension overhaul legislation that is expected to be considered by the Senate in the next few days. We heartily support and endorse that action as well.

As you know, your legislation would change the PBGC rules so that airline pilots, who by FAA regulation must stop flying at age 60, are protected from having their pension benefits actuarially reduced by the PBGC if their defined benefit retirement plan is terminated. S. 685 is bold and innovative legislation that calls for pilots to receive benefit guarantees at age 60 that are calculated as though they already had reached age 65.

Your legislation will provide some measure of pension protection for those thousands of airline pilots who have already lost and/or will likely lose retirement benefits they had worked for and counted on for years. These employees who have given so much to their companies already deserve no less.

We greatly appreciate your leadership on this important matter, and pledge to work with you and your staff to assist in any way to secure inclusion of the language of S. 685 in pension reform legislation.

Sincerely,

DUANE E. WOERTH,
President.

Mr. AKAKA. I urge my colleagues to support the amendment so pilots are not unfairly penalized for having to retire early by FAA.

I call for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. As I understand it, it has been the request of our leaders we give notification to our colleagues when we are likely to have a vote. It is agreeable with the Senator from Hawaii that we have this vote just prior to the time we have the final passage. I certainly yield to my friend and colleague.

Mr. ENZI. I understand this has been cleared on both sides. I ask unanimous consent when all time is used or yielded back on the amendments and the underlying bill, the measure be temporarily set aside; provided further that at 2:30 today the Senate proceed to a vote in relation to the Akaka amendment, to be followed by a vote on passage of the bill, as amended, to be followed by a vote on the adoption of the conference report to accompany the Commerce-Justice-State appropriations bill.

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

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield such time as I might use.

At the outset, I thank our Senate leadership, Senator FRIST and Senator REID, for arranging the Senate schedule so we would have an opportunity to consider this extremely important legislation. I thank my colleague and friend, my chairman, Senator ENZI, for his commitment to getting good legislation passed at a very important time in the entire history of the evolution of the pension system in our country. This is a very important piece of legislation. His diligence, attention to detail, and persuasiveness has permitted the Senate to move this legislation forward in a timely way. I am very grateful to him for all of his good leadership.

I thank our friends on the Committee on Finance, Senator BAUCUS and Senator GRASSLEY. We have worked together at other times on the pension legislation. We did work closely together over a year ago and received the overwhelming support of the Senate in a bipartisan way. We worked very closely with the members of the Committee on Finance. As a result of both committees working, we have a stronger legislation. This is a bipartisan effort in a very important area of public policy. I am grateful to all who brought the Senate to where we are at this time.

Mr. KENNEDY. Madam President, the retirement security of millions of hard-working Americans is at risk. Millions of our fellow citizens have worked hard all of their lives, played by the rules. They have been dedicated and loyal workers only to find their promised pensions disappear when they retire. They worked faithfully, assuming their retirements would be their golden years. But then suddenly it all disappears. The pension plan is in financial trouble and their retirement dreams are being wiped away. This is exactly what has happened to millions of loyal American workers.

In the past 5 years, 700 pension plans have gone into crisis, and millions of workers have lost $8 billion in pension benefits that they had been promised. It is a crisis. We see it with our airline workers. We see it with our workers in manufacturing industries. We see it with our construction workers and sales clerks at the store and so many of our neighbors. It is a crisis, and this bill responds to it by saving their pensions.

Large numbers of Americans are increasingly concerned about their retirement security and rightfully so. Each leg of the three-legged stool of retirement—private pensions, private savings, and Social Security—is in jeopardy.

Many Americans find they are unable to save anything toward their retirement. In fact, the personal savings rate has now fallen below zero. Americans are spending more than they earn. It is no wonder when wages are stagnant and costs are soaring for basic necessities such as energy, housing, health care, and education.

The Bush administration continues to propose to privatize Social Security, which would put the reliability of future benefits in that landmark and highly successful program in jeopardy.

Many workers have no private pension at all. Only half of American private sector workers have a pension through their job. And 2.7 million fewer private sector workers have a pension today than in 2000. Listen to that: 2.7 million fewer private sector workers have a pension today than in 2000. Most workers who do have a pension today have only a 401(k) account as their pension, but many have nothing saved in these accounts. Even those who are saving do not have enough to live on in retirement. More than half of the workers approaching retirement have less than $43,000 in their 401(k), and workers who rely on these accounts face the constant risk of investments that perform poorly.

These problems make pensions with defined benefits more critical than ever because they are secure. They provide a known monthly benefit for life. They are ensured by the Federal Government. But they are becoming much rarer today, as businesses shift away from them.

In the early 1980s, almost 40 percent of American workers were covered by secure pensions. Today, that number is only 20 percent. Yet, while workers' pensions are being cut, executives' pensions are increasingly generous.

A recent study found that 25 percent of the CEOs of 500 large companies had been promised retirement benefits of more than $1 million a year. Why should Ken Lay of Enron or Bernie Ebbers of WorldCom walk away with millions of dollars in guaranteed pensions after driving their employees' pensions into the ground?

On this chart, we see this rather dramatic decline in terms of what is happening to workers, particularly in defined benefit programs. We find that the CEOs are being well taken care of. Here is Ken Lay. Enron required the employees to invest in the company stock and then lied to the workers, lied about the state of the company's finances. As stock prices plunged on the news of the corporate mismanagement, employees were blocked from selling their stock. This is an area we have dealt with, I think, quite effectively in our reforms. And 11,000 employees lost $1 billion in retirement savings during that period of time. We have the example of the WorldCom CEO. Bernie Ebbers was given a $1.5 million-a-year pension. He was later convicted of accounting fraud. Thirty percent of the employees' 401(k) money was invested in the company stock. When WorldCom stock plunged in value, 93,000 workers and retirees with WorldCom 401(k) accounts lost hundreds of millions of dollars in their retirement savings.

These are issues that are enormously important. I think when we were getting started, in terms of the debate on pension reform, most Americans were wondering what the Congress was going to do about these issues. They were less aware of the fact that the defined benefit programs have been gradually in decline, the kind of pension program that provides the best kind of security to American workers. And they were not familiar with other factors: the drop in the savings accounts, the fact that so many of the 401(k)s have been buffeted around by the stock market and have not been enough to provide for a secure income.

But they are increasingly aware now. I think as the debate took place earlier this spring about the solvency of Social Security, people have focused on the solvency of Social Security and have also thought about their retirement. When they think about their retirement, obviously, they are concerned about their pensions.

But we have also seen that workers have lost dramatically over the period of these past several years. In the last 5 years, workers have lost $8 billion. That is $8 billion workers have lost in the last 5 years. For those pensions, workers give up an increase in their pay, they give up maybe a reduction in the amount of hours they have to work, they give up other kinds of benefits. That is in order to put something aside in terms of pensions they are allegedly going to be guaranteed at the time they finish working for their company. And still, we have seen that amount of money—$8 billion—that has been relied on by American workers effectively wiped out and disappeared. That is why the legislation we have is so important.

When a major pension plan fails, it places a strain on the entire system. The Pension Benefit Guaranty Corporation, which ensures these pension plans, has moved from a surplus in 2001 to a deficit of $23 billion today. Our pension insurance system protects the retirement earnings of over 43 million Americans, and we must do what it takes to see that it is there for the years to come.

These are serious problems that require immediate action by Congress. The pending bill adopts a broad approach, with stronger rules for funding, expanded disclosure, so workers are going to know the stability and the financial security they have with their pension. It includes other new protections for American workers: It strengthens the existing pension plans by requiring companies to fund their pensions that workers have earned. It takes steps to prevent future pension failures and recognizes that workers who are increasingly in charge of investing their own retirement savings need additional help—two very important points.

There is going to be the help and assistance, through the PBGC, to help companies, as they are looking at sort of more financial difficulty, to make sure these pensions are going to be safe and secure. A front-end warning system built into this legislation with flexibility for negotiations—that is very important. And information that is going to be made available to workers about their own retirement—that is enormously important.

The reforms in this bill allow troubled pension plans the leeway they need to get back on their feet. The current rules would require companies to pay large amounts into their troubled pension plans right away. That is unrealistic and could force many companies to drop their pension plans altogether. That would hurt workers. Our reforms allow companies to save their troubled plans by increasing payments gradually over a longer period of time. We provide a realistic payment schedule but strengthen the current rules for single-employer pension plans over time by requiring companies to fund 100 percent of their pension promises to workers. These workers have earned their pensions over a lifetime of hard work, foregoing raises and other benefits. Yet current law allows many companies to lag behind in paying for them. Our legislation solves this problem by requiring companies to pay more into their pensions in a fair and predictable way.

Our legislation also recognizes the power of public disclosure and the urgent need for more effective oversight of pension plans. Under current law, workers receive little financial information about their pensions, and what they do receive is often years out of date. They have earned these pensions, and they deserve to know whether these funds are there to pay them. That is very important and one of the most important changes to the current system: giving the notification to workers.

Our bill ensures that workers and retirees receive up-to-date information each year. The bill also provides incentives to keep pensions financially healthy by tying executive compensation to pension health. Executives should not be able to feather their own retirement nests while workers lose their nest eggs. Our legislation prohibits corporate executives from putting company funds into their own retirement trusts when the pensions of rank-and-file workers are underfunded. That is very important. It should be obvious. Justice demands it. But we will make sure that it is implemented.

Recent headlines show that many companies are using bankruptcy courts to abandon their pension plans. Hundreds of thousands of workers and retirees at companies such as United Airlines, US Airways, Bethlehem Steel, and LTV Steel are now without the pensions they worked so hard to earn.

The bill also contains specific provisions to save airline pensions by offering companies a specialized payment program. And I know that has been reviewed earlier in the debate.

In addition, our legislation addresses the needs of nearly 10 million workers and retirees who receive pensions through multiemployer plans. These are the workers who clean our office buildings and hotel rooms, sell us our groceries, build our homes and schools and highways and deliver goods across the country. Many of them are in industries where they have to move from job to job and would not be able to earn a pension at all without these multiemployer plans, since their employers, particularly small businesses, could not afford to offer a pension plan of their own.

The majority of these plans are in strong financial shape. But the recent economic downturn and weak stock market have put some of these plans in financial difficulties similar to those facing single-employer plans. We owe it to these employees to protect their pensions now, instead of acting only when they are about to fail.

Hybrid pension plans, including cash balance plans, have a growing role in our retirement system. They have a number of advantages. They provide secured, guaranteed pensions. They are attractive to younger workers and those such as parents caring for children. But older workers can lose out when their companies switch to these plans because they lose a large portion of the benefits they were promised. Our legislation requires companies that are going to switch to these plans to protect the benefits that workers have already earned. That is enormously important.

I want to highlight another very important area and that is the legislation also includes very important provisions from the Women's Pension Protection Act that I introduced with Senator SNOWE. Retirement security is essential for all Americans, but too often we fail to meet the needs of women on this basic issue. Women live longer than men, but they continue to earn far less in wages over their lifetimes. They are also much less likely to earn a pension. These factors translate into seriously inadequate retirement income for vast numbers of women.

The realities of this injustice are grim. According to the most recent data, only 28 percent of women age 65 and over are receiving private pension income, and for those who do, the average is only $3,800 per year, compared to $8,100 for men. Minority women are in even more desperate straits. Only 20 percent of African-American women and 9 percent of Hispanic women receive a pension. These disparities are a major reason why nearly one in five elderly single women lives in poverty.

Our legislation gives them much greater retirement security. Widows will receive more generous survivor benefits. Divorced women will have a greater ability to receive a share of their former husband's pension after divorce. These are long-overdue improvements in the private pension system so retirement savings programs will be more responsive to the realities of women's lives and careers.

American workers and their families rightly expect Congress to protect their hard-earned pensions. This legislation is an important start to meeting this challenge. Madam President, I note the Senator from Pennsylvania is in the Chamber. I want to quickly review this legislation, again.

On this chart is effectively a description—I know the writing is small for those who are watching—but this is really the backbone of this legislation. It requires companies to fund their promises. It helps prevent future pension failures. I have outlined, very briefly, in my comments how that is done—by greater flexibility and negotiation. It gives workers timely and accurate information on pension plan finances. That does not exist today. Well, it exists but not in an efficient or effective manner. Many times it takes months or even years to get that timely information. This legislation will provide it in a timely and accurate way, which is enormously important for workers.

It protects the workers and businesses in multiemployer pensions. We have the single pensions, as we mentioned, and now also in the multiemployer pensions they face different issues. But we have strengthened and provided and followed a number of recommendations that were made from the business community and the worker community to strengthen those programs.

It protects older workers in cash balance plan conversions. I have outlined the advantages of cash balance plans to younger workers, but to older workers it can work disadvantageously. This legislation provides a very important way of protecting those who have been reliant on existing programs rather than a cash balance plan. That is enormously important. Otherwise there could be some significant injustice.

It gives workers access to independent investment advice to avoid the kind of Ken Lay situation where they had the requirement of investing in the corporation and were refused, when the company was going south, the ability to sell employer stock, and the workers took a bath. That was true in my State with Polaroid, a similar kind of situation and a tragic situation that involved abuse of the pension system at a time when a number of the executive branch did exceedingly well. We are giving access to independent investment advice, and workers can make their judgments. These are what we call the Bingaman proposals. They have been worked out in a bipartisan way and have solid support in the Senate.

It adopts the post-Enron worker pension protections. It stops corporate executives from lining their pockets when workers' pensions suffer. This is to deal with the issue I mentioned briefly before, where the corporate executives can make out while the workers are losing.

It provides greater retirement security for widows and former spouses. This is enormously important because of the injustice with regard to women and the pension system, which is extraordinary. Senator SNOWE and I have been working for a number of years to try to address that. I am grateful to our chairman, Mr. ENZI, for reviewing these matters in great detail and including these provisions. This is enormously important.

This is an important piece of legislation. It doesn't solve all of the problems, but it will certainly do a great deal in terms of ensuring workers in the future of the security of their pensions. We are very hopeful, with the strong bipartisan support we have been able to develop in the Senate, that we can carry these very important protections for workers, for companies, for women, for the single employer pensions, for multiemployer pensions, through and have them enacted into law.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ENZI. Madam President, I thank the Senator from Massachusetts for his comments and the outstanding way he summarized the principles we have been working on. It is a very good job, considering that this is a 730-page bill. He got into significant details. It has been the details that have been holding it up for literally years. You notice that nobody is speaking in opposition to this bill, so that means the bipartisan effort has paid off.

I yield 10 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I thank the chairman of the HELP Committee, as well as the ranking member, for the excellent work they have done on this legislation and for the tremendous cooperation they have shown me, as well as Senator BAUCUS, and my chairman Senator GRASSLEY, on the issue of multiemployer pensions, which has been my area of focus on this legislation. It is a very important issue—and I will lay out here—it is critically important that we make sure these plans survive. Because unlike the single-employer plans, the backstop, the insurance for a plan that gets dumped into the PBGC is actually less than one-third of what a single-employer plan would be. It is even more important for us to have healthy multiemployer plans from the standpoint of the beneficiary than it is to have healthy single-employer plans.

Again, I thank the chairmen and ranking members of both committees. They have made the case—I have listened to some of the debate—that the need for reform in both these areas is clear. I come from the State of Pennsylvania, which unfortunately has seen its share of plans being dissolved and thrown into the Pension Benefit Guaranty Corporation. We have a lot of steel companies. We have an airline that has done that. We have, unfortunately, tens of thousands of retirees who are now receiving their benefits through the PBGC and who were promised more generous benefits under their contracts with the steel companies and the airline, who are now living, in many cases, very much hand to mouth. We need to do a better job for future workers and retirees. We need to address this problem in a climate where increasingly we are seeing concern about not only the dumping of these plans onto the PBGC, and the transfer of defined benefit plans to defined contribution plans, we are increasingly seeing that trend in a lot of industries. I believe there is a place for defined benefit plans and that we need to have a structure in place to make sure they are adequately funded and safe for pensioners to rely upon as they enter into their retirement years.

Again, I don't want to repeat all that has been said about the state of play of how bad the system is as far as the deficits and the problems with the single-employer plans. I want to focus on the multiemployer plans because that is an area on which I have been active in trying to make sure it was included in this bill and that many of the reforms I put in place in the legislation I introduced with Senator STABENOW a few weeks ago were included in the mark. Again, I thank the chairmen of both committees and the ranking members for working with us to see that happen.

The importance of making sure multiemployer plans are safe is because the maximum guarantee for a multiemployer participant with 30 years of service is less than $13,000 a year. That means if you worked for the IBEW and you were a tradesman, an electrician, and you built some of the greatest buildings in Philadelphia, for example, if the IBEW pension plan goes belly up, the maximum benefit you would receive would be less than $13,000 a year. That is a horrific end for many people from the standpoint of what they would otherwise have been promised under their plan. Contrast that with a retiree covered by a single employer plan with the same record. They are looking at about $45,000 and in some cases up over $100,000. So the fallback, if these plans should fail, is substantially lower in the multiemployer world. That is why it is vitally important that we have remedies and things to improve the overall picture. There are plans that are in bad shape. We have plans that are funded as low as 50 percent. One plan is $20 billion underfunded. We have problems out there. The consequences if a single-employer plan failing pale in comparison to the devastation to pensioners if multiemployer plans fail.

I have worked hard with a coalition to try to put together a piece of legislation that I mentioned before, S. 1825. Senator STABENOW has worked hard on this issue. Many of the reforms we put in place are included in this mark. We worked together with a coalition of management and labor and met over a period of months to come up with a bipartisan and cooperative agreement between those who are on opposite sides of the bargaining table. We have had everybody here—from the building trades, the Teamsters, the food and commercial workers union, the IAM, to the grocery manufacturers, a whole host of grocery chains, as well as freight companies, UPS, contractors, et cetera—and have worked together over a period of months to come up with a bill that, as Chairman ENZI mentioned, has strong bipartisan support because we were able to negotiate. We haven't gotten everything, candidly, we wanted in this legislation.

I ask unanimous consent to print in the RECORD the list of folks supporting this multiemployer bill.

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

Senator Santorum worked with the Multiemployer Pension Plan Coalition to develop S. 1825, the Multi-Employer Plan Funding and Deduction Reform Act of 2005. The coalition members are:

Albertsons; American Federation of Musicians; American Federation of Television and Radio Artists; American Trucking Associations; Associated General Contractors of America; Bechtel Construction Company; The Building and Construction Trades Department, AFL-CIO; Carhaul; Food Marketing Institute; Finishing Contractors Association; International Association of Machinists; International Brotherhood of Teamsters; International Council of Employers of Bricklayers & Allied Craftworkers; Kroger; Mechanical Contractors Association of America; Motion Picture Association of America; Motor Freight Carriers; National Electrical Contractors Association; National Coordinating Committee for Multiemployer Plans; Recording Industry Association of America; Safeway; Sheet Metal & Air Conditioning Contrators' National Association; Supervalu; NEA/The Association of Union Constructors; United Food & Commercial Workers Union; UPS; U.S. Chamber of Commerce; and Yellow Roadway Corporation.

Mr. SANTORUM. I have worked with my constituents. I have had I don't know how many meetings with members of labor unions across Pennsylvania to talk about this issue and get their input as to how we can deal with the problem of multiemployer plans to make sure we improve their solvency and increase the reliability of those plans for our pensioners. It was an unprecedented effort. I thank Jen Vesey from my staff for the work she has done. I thank in particular the folks from the Pennsylvania building trades and Teamsters who have been terrific in trying to work through some of these very tough issues to get a consensus bill that I am hopeful we can not only pass here in the Senate, obviously in the next hour or two, but also to get something passed permanently by the end of the year.

One of the key concepts folks were concerned about was the concept of an early warning system for multiemployer plans. Under current law, too often we don't know about economic conditions of these plans until they are facing extreme financial pressure. As we have said, sometimes the remedies are too late to solve the problem, and we end up with the situation of people not having sufficient retirement. In this bill, we do address this problem. However, I have heard from labor and management representatives of the multiemployer plans. They have expressed concerns about the approach to this taken in S. 1783.

It is important that we keep in mind in a multiemployer world, these pension plans typically operate in tandem with health plans. There is a concern the dollars that otherwise could go to maintain important health benefits may be unnecessarily diverted to pensions because of overly stringent performance benchmarks. I have heard about those benchmarks. I have heard about those concerns. We will continue to work on this. It is important that we continue to work toward a solution that imposes discipline, which is what this legislation does, without imposing undue burdens on the plans, particularly how they might affect health benefits.

I am pleased my colleagues have accepted most of the changes we proposed and certainly remain committed to working on these important issues to strengthen multiemployer pensions to protect these folks.

This is an important piece of legislation. This is a great victory for working men and women across the country that the Senate is about to act on. As we head into the holidays, where you want to feel good about your financial security, if we are able to get this accomplished by the end of this year, we will provide a whole host of people across America a better feeling about not just their holiday plans but the security of future holidays after they have finished their working years.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Wyoming.

Mr. ENZI. Madam President, I thank the Senator from Pennsylvania for his diligent effort, particularly in the multiemployer area. He checked with us and gave suggestions several times a month during the process when we were putting together the HELP bill. That was extremely helpful, particularly since he was also on the Finance Committee which had some jurisdiction in this area. His coordination between the two committees was invaluable. His tenaciousness and base of knowledge on that issue were particularly helpful. I thank him for his efforts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I want to mention in particular my colleague and friend on this side of the aisle, Senator BARBARA MIKULSKI, who is ranking member on the Retirement and Aging Subcommittee on the HELP Committee and has attended all of the hearings in the subcommittee and in our full committee and has been a tireless advocate on this issue. I have learned a great deal from her. I am enormously grateful to her for all of her efforts. She has been a great ally.

I also thank my friend TOM HARKIN. This is one in a range of issues in which he has been involved and about which he cares deeply.

He is enormously knowledgeable about it, and he was very committed in terms of the defined benefit programs and how we can strengthen those, concerned about the relationship between the cash balance and the defined benefit programs, whether there is going to be fairness to workers, and he made a great contribution to the development of our legislation.

JEFF BINGAMAN had reforms and worked those out in a bipartisan way.

As we are coming into the final moments, I want to make a few comments.

This legislation is strongly bipartisan. We don't have final legislation over in the House of Representatives. I hope our colleagues and friends in the House of Representatives would at least take some inspiration from what we have been able to achieve over here working in a bipartisan way under Republican Chairs to come up with a product which is going to move through the Senate at 2:30 or 3 o'clock this afternoon, which will make a major difference in terms of protecting workers and also be sensitive to some of the economic challenges. We have not had a finished product over in the House, and I am concerned it has been rather fractured over there in terms of the nature of the debate and discussion.

I hope the leadership over there will take a page from the Enzi and Grassley book about how to work their committees in ways to develop bipartisanship on the committees and also between those committees as it is enormously important.

Finally, Mr. President, why this is important: We see that our Social Security bedrock of retirement now is being reviewed; some believe under attack. We have private pensions. Only 50 percent of our workers have pension coverage at work. Only 21 percent have a secure defined benefit. So it is a three-legged stool: Social Security, pensions, and then private savings, and the private savings count, as shown on this chart in terms of the current savings, negative six-tenths of 1 percent of income—a decline in savings. They have virtually dried up. The reason for that is because, as shown by this chart, of the increased costs of gasoline, health insurance, housing, and college.

People just cannot afford to save. They have to provide for their families in these areas. And when it comes to the very end of the day it is the squeeze on that pension retirement. Living in the richest country of the world, in our democracy, being able to retire with a sense of dignity is certainly a value all of us hold dear. We are in real danger of losing that very important value. This legislation is a very important downpayment to make sure that value is going to be there for millions of our fellow Americans.

I am enormously grateful to the staff: Rohit Kumar with Senator FRIST; Bob Greenawalt, Senator REID; Jon O'Neill, Senator GRASSLEY; Judy Miller, Senator BAUCUS; Stu Sirkin, Finance Committee; Katherine McGuire, Ilyse Schuman, Greg Dean, Diann Howland, and David Thompson, Senator ENZI; Karla Carpenter, Senator DEWINE; Ellen-Marie Whelan and Ben Olinsky, Senator MIKULSKI; and Michael Myers, Holly Fechner, Portia Wu, and Terri Holloway from my staff. As always they have done a terrific job.

I also want to thank particularly Jim Fransen and Stacy Kern from the Senate Legislative Counsel's office, who worked day and night to draft this bill. And thanks also to Carolyn Smith, Patricia McDermott, Nikole Flax, and Allison Wielobob of the Joint Committee on Taxation.

I yield the floor, Mr. President. I see my colleagues here, and I understand we are going into morning business. If not, I am glad to yield time to them.

ORDER OF PROCEDURE

Mrs. CLINTON. Mr. President, I ask unanimous consent to speak for such time as I may consume remaining for the Democratic side on the pension bill, and then for an additional 20 minutes as if in morning business.

The PRESIDING OFFICER (Mr. THUNE). Is there objection?

Mr. ENZI. Reserving the right to object, we still have some time remaining on the bill, and there is a vote at 2:30. I guess I did not understand exactly the time being requested. It sounded like 35 minutes.

Mrs. CLINTON. I think we will be finished by 1:30.

Mr. ENZI. Then I would ask the remainder of the time until 2:30 go to this side of the aisle.

Mr. STEVENS. I object. Mr. President, reserving the right to object, I seek time before the vote to raise a point of personal privilege concerning a comment made about me in the Chamber today. I desire 5 minutes but before the vote.

Mr. ENZI. I was reserving in that time time for the Senator from Alaska to speak.

Mr. STEVENS. If that is agreed to, I won't object to the time until that time being allocated to the Senator from New York.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it so ordered.

Mrs. CLINTON. I thank the Chair. And I thank the managers of the pension bill.

HURRICANE KATRINA COMMISSION

Mr. President, I come to the floor today to discuss a topic that many on the other side of the aisle, as well as in the administration, hope will just go away as we near the end of this session—the creation of an independent bipartisan commission to examine the State, local, and Federal response to Hurricane Katrina. We all know that nearly 3 months ago Katrina struck Louisiana, Mississippi, and Alabama, wreaking havoc on cities along the coast and most especially in New Orleans and the surrounding parishes. Thousands of residents had to flee, and thousands more saw that the levees were breached and cataclysmic flooding wiped out the city's infrastructure causing extensive damage far beyond the boundaries of New Orleans. Along the gulf coast the hurricane force winds destroyed so many of the communities that had been there for years.

Americans were horrified by the images on television of this catastrophe unfolding before our very eyes. It was followed by an equally catastrophic failure of Government in its uncoordinated, failed response.

I remember my own visit to Houston in the days immediately following the hurricane where I met with people who had fled Louisiana and Mississippi for shelter in Texas. They were desperately searching for lost relatives and to try to regain some semblance of order in their lives.

Mr. President, our response at all levels of Government was nothing short of shameful, and the victims of Hurricane Katrina, as well as all Americans, deserve to know why that response was such a colossal failure. Who was in charge? Was it the President, the Director of Homeland Security, the FEMA Administrator?

Why were Government assets not more readily available or prepositioned better? Why was there no plan to deal with an event that had been predicted for years? What went wrong at the Federal, State, and local levels? Why were declarations delayed?

But even more important than the answers to these questions is what do we need to do to fix it so this never happens again in our country? Who is in charge now? What more must be done to fix the problems that plague our national system of disaster, response, and recovery?

On September 11 we lost nearly 3,000 people, and the families of those left behind demanded to know what went wrong. Thanks to their dedication, we finally convinced the President and Congress to establish the 9/11 Commission. It was the right thing to do because over 218 years ago the signers of the Constitution pledged themselves on behalf of all Americans to provide for the common defense. So when we hear things such as the fact there was only one FEMA employee in the entire city of New Orleans from August 27 through 30, we see e-mails from the FEMA Director that he was distracted with his wardrobe when people were drowning in their own homes, waiting for rescue from the roofs of those homes, and the national response plan that is supposed to guide our national response was basically totally ignored, we have to ask ourselves how could we be so unprepared especially after September 11?

Because I believe the victims of Hurricane Katrina and, indeed, all Americans deserve answers to these questions and a way forward that merits the confidence and trust of the American people, I introduced legislation cosponsored by my friend and colleague from Colorado to establish a Katrina commission, modeled after the 9/11 Commission, intended to be nonpartisan, independent, designed to study the Federal, State, and local response to Hurricane Katrina.

We have 17 cosponsors of this legislation, and I am, frankly, outraged we cannot get an up-or-down vote on it. The cameras may have left the area of destruction but the devastation and the devastated lives remain. We owe it to the thousands of people who are still displaced, who lost loved ones, who are still finding bodies in homes that people are returning to, to understand what went wrong, what needs to be fixed, and where the responsibility really resides. Over 80 percent of the American people believe a Katrina commission is the right and necessary thing to do. Yet the Republican leadership of the Congress is afraid to allow an up-or-down vote. Why? Because they know what I know—that a lot of Republicans will vote for this. They were equally dismayed. They saw the same television pictures. They worry about what might happen next with an earthquake, a forest fire, massive tornadoes like just whipped through the central-southern part of our country. But even more significantly, the reason this is important is because of the potential of a terrorist attack that could happen again. And I have to say it appeared that our Federal response based on Katrina is nowhere near ready. We cannot accept the status quo. We must fix FEMA and the Department of Homeland Security.

My friend from Colorado is a cosponsor of that legislation, and I ask him does he believe a Katrina commission is still needed?

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. I thank my colleague from New York for her leadership on this very important issue for our Nation. I deeply share her belief that a

Katrina commission is, in fact, needed and that we ought not to wait.

The headline on the New Orleans Times Picayune editorial page this Sunday was ''Forgotten Already.'' ''Forgotten Already.'' It is about how Washington has already forgotten that Katrina is still an ongoing crisis. It is a shame that Washington has such a short attention span.

In the days following the storm, Congress moved quickly to pass a $70 billion hurricane relief effort. We held hearings and we grilled the officials from FEMA. However, because the storm waters have receded, many politicians in Washington feel they can roll their sleeves back down and declare the job is done, the mission is accomplished.

That is not the case. Tell the 1,154 children who are missing or who are looking for their parents that our job in Katrina is done. Tell the 129,000 Louisiana residents, 129,000 Louisiana residents who still do not have electricity, that the Federal Government task is done. Tell the 196,000 Katrina evacuees who are currently unemployed, who do not have jobs, that our mission is accomplished.

Our job is far from done. We need to do much more to ensure that the individuals and communities along the gulf coast recover, and we have to do a lot more to plug the homeland security vulnerabilities that Hurricane Katrina exposed.

What Senator CLINTON's legislation would do is establish a Hurricane Katrina commission, similar to the 9/11 Commission. The commission would investigate what went wrong in the Government's response to Katrina and what steps we need to take to make things better.

I remember a number of years ago meeting with President Bush and then-Homeland Security Adviser Ridge at the White House shortly after 9/11 with attorneys general from States around the country. At that time, the President was opposed to the creation of a department of homeland security. Later, the President relented, taking the position that in the post-9/11 world, a department of homeland security was necessary for us as a nation to make homeland security a greater priority to protect America.

A few years later, I came to Washington as a U.S. Senator to help on that agenda. I want to make protecting our Nation and our homeland a greater priority. Yet 4 years after 9/11, Katrina slapped the Nation with reality. We are not prepared to protect our homeland, even when we have days of warning that American citizens are in the path of the gravest danger. That reality is a shame on the efforts of the last 4 years, but it would be an even greater shame for our Nation not to learn from our failure in the preparation and response to Katrina. We need to learn from those lessons.

My colleague's proposed bipartisan commission would help us make sure we prevent failures in homeland security in the future. Therefore, I am proud to stand here with Senator CLINTON and 16 other cosponsors in demanding accountability from the Federal Government. I am proud to stand with them for a stronger America.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank my friend for his support. He knows a lot about what he is speaking of today. He was an attorney general. He had law enforcement responsibilities. He knew how essential it was to coordinate services throughout the State of Colorado. I am very grateful for his support and his eloquence on behalf of this bipartisan commission and his vigilance in working toward the establishment of a Katrina commission.

I have said before that I agree that our established congressional committees should conduct their own oversight roles, but an independent commission is absolutely necessary to get this right.

The Katrina commission would be made up of individuals with the expertise and credentials to do the work; namely, people who have experience with emergency preparedness, mitigation, and cataclysmic planning. The commission would build upon previous investigations and issues we know exist. For example, on 9/11, one of the problems our emergency response system faced was the lack of interoperable communications; namely, the police radios couldn't talk to the fire department radios, couldn't talk with people coming from other parts of New York or even outside New York to be helpful at the site of Ground Zero where the Towers collapsed. Yet 4 years later, we find people responding to Katrina faced the same problems. We have not yet solved the problem of interoperable communications.

How long are we going to let this go on? When the 9/11 Commission issued its report, the majority leader applauded the Commission for its tremendous act of public service and patriotism and looked forward to a time when we could work together to ensure America grew stronger and better prepared. Let's ask ourselves, Are we stronger today and better prepared?

Although I applaud my colleagues on both sides of the aisle who are conducting the committee hearings into what happened, I do not believe this disaster has the attention or the right mix of people investigating it that will give us both answers and a roadmap for the future.

Some of the statistics are frightening. FEMA ordered over 125,000 trailers or mobile homes to provide housing for an estimated 600,000 people. Media reports indicate that as of the beginning of November, hundreds of thousands of people are still in hotel rooms, relatives' rooms, shelters, and even in tents. Now we hear FEMA is going to move these people out of their hotels as of December 1. Where are they going to be moving them? What is going to happen to them? I think these are questions that add to the urgency of such an investigation. There are thousands of churches and other faith-based institutions, as well as nonprofits, that have yet to hear from FEMA as to whether they will get any help in continuing the assistance they are providing.

I cannot help but agree with the Senator from Colorado, who pointed out that we went through this after 9/11. He spoke about his meeting with the President. He spoke about the resistance to a department of homeland security, to any kind of investigation.

This Katrina commission will eventually be put into operation. It will have to be because people are not getting the answers they need. I hope we will come to a realization that this Katrina commission, an independent commission, is the way to proceed.

UNANIMOUS CONSENT REQUEST—S. 1748

Mrs. CLINTON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 220, S. 1748, a bill to establish the Katrina commission investigation, that the bill be read a third time and passed, and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. CLINTON. Mr. President, there we have it. We are once again hearing objections. The status quo wins the day. FEMA will not change. The Department of Homeland Security will not change. We will never get to the bottom of what happened and what we need to do to fix the obvious flaws unless we have this independent commission.

I ask my friend from Colorado if he agrees that the only way we will get the answers we need is through an independent commission.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I agree with my friend and colleague from New York. The Republican leadership should allow this Senate to have a vote on whether we establish an independent Katrina commission. This ought not be a partisan issue. This is not about Republicans and Democrats and Independents. This is not about assigning blame. It is about learning from our mistakes and building a stronger Nation.

I hope that President Bush, Senator FRIST, and Speaker HASTERT will join us and move forward in developing this independent Katrina commission so we can make our homeland even more secure, because what Katrina taught us, without a doubt, is that we as a nation are not prepared. Every day we go without this commission is a day lost. It puts us a day further from finding answers for the victims of Hurricane

Katrina, a day further from identifying the gaps in homeland security, a day further from a safer America.

I want to say that I, too, have been involved as an attorney general looking at difficult issues that have occurred in my State. I walked through the carnage of Columbine High School, the bloodiest school shooting in America. And so many years later, the answers we sought about why that happened and how it could have been prevented, how we could have improved on interoperable communications, those lessons have not yet been placed on the table.

I daresay that without the efforts of the 9/11 Commission, the lessons learned from that most horrific attack on America on 9/11 would not have been learned. In the same way, as we move forward to determine whether we have a Department of Homeland Security that is up to the job of protecting Americans, protecting the homeland, protecting our citizens, it is a major mistake on the part of the United States of America not to undertake this independent review which has been presented in a bill by my colleague from New York.

I thank Senator CLINTON again for her advocacy for this legislation. I vow to work with her and to try again and again with my colleagues on both sides of the aisle. I do not believe we can adjourn this Congress without finishing the job on a Katrina commission.

Mr. STEVENS. Mr. President, will the Senator yield?

Mrs. CLINTON. May I finish, Mr. President?

Mr. STEVENS. I misunderstood the time sequence, and the Parliamentarian tells me the Senator has until 2:30 p.m.?

Mrs. CLINTON. No, 1:30 p.m.

Mr. STEVENS. I remove my previous objection. The Senator should continue to have her time until 1:30.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank my colleague from Alaska. I will wrap this up.

I wish to serve notice to my colleagues in the Senate that my good friend from Colorado and I will be back again and again and again, as we were with the 9/11 Commission. He was not in the Senate at that time. He was serving his people in Colorado from a position of trust and responsibility as attorney general, but he watched from afar, understood the tragedy that befell us, and, like so many of us who are given the public trust of public office, wanted answers. He came to this body to help find those answers.

When Katrina struck and it became so apparent that we were not yet prepared, the Senator from Colorado was among the very first to say we need those answers and we need them yesterday because no place is prepared, no place is ready if the Federal Government is not in a position to provide the assistance and the assets and the support that is needed in the face of a large manmade or natural disaster.

We will be back again and again, as we were with the 9/11 Commission, until this commission is established. It is the right thing to do. The country deserves to have it and, most of all, the people along the gulf coast deserve the answers and deserve to know what did occur to them, what could have been prevented, and then the rest of us should act on that information to make sure our Nation is prepared in the future.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, how much time remains for the minority at this time?

The PRESIDING OFFICER. Four minutes.

Mr. STEVENS. Mr. President, if no one seeks that time, I ask that I be permitted to start the majority time at this time.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. No objection.

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

The Senator from Alaska.

POINT OF PERSONAL PRIVILEGE

Mr. STEVENS. Mr. President, I have sought the floor now to speak on what I consider to be a matter of personal privilege. It has been brought to my attention that the Senator from Illinois unfairly maligned my character in direct violation of rule XIX of the Standing Rules of the Senate.

Rule XIX states:

> No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

The Senator from Illinois apparently takes exception to the fact that witnesses who appeared voluntarily before the joint hearing of the Senate Commerce and Energy Committees last week were not sworn in. I would like to set the record straight about the events of that day.

The request by Senator CANTWELL to swear in the witnesses was delivered to my office at 8:10 a.m. on the morning of the hearing. It was leaked to the press before it was ever delivered to me. As a matter of fact, the Seattle press that morning had reported that I had already rejected the request before I had even received it or read it.

While I have accomplished many things in my 37 years in the Senate, the ability to see into the future or read into the minds of other Members is not one of them. Had the Senator from Illinois read the transcript of that hearing, he would have a better understanding of why I took the actions I did as the chairman opening that hearing.

I made this opening statement:

> I remind the witnesses as well as the Members of these committees, Federal law makes it a crime to provide false testimony. Specifically section 1001 of title 18 provides in pertinent part: ‘‘Whoever in any matter within the jurisdiction of the legislative branch of the Government of the United States knowingly or willfully makes any material false, fictitious, or fraudulent statement or representation shall be fined under this title or be imprisoned not more than 5 years, or both.’’

I continued my statement at that time:

> Having reviewed the rules of the Senate and the rules of the Commerce and Energy Committees and the relevant provisions of title II of United States Code, there is nothing in the standing rules of our committee rules or in the Senate which requires witnesses to be sworn. The statute has the position that everyone appearing before the Congress is in fact under oath. These witnesses accepted an invitation to appear before our committees voluntarily. They are aware that making false statements and testimony is a violation of Federal law whether or not an oath has been administered. I shall not administer an oath today.

Earlier, Senator DURBIN of Illinois came to the Chamber and said—and I quote from the RECORD that has been provided to me:

> You probably heard about the hearing before the Senate Commerce Committee. Senator Maria Cantwell of Washington insisted these oil company executives be sworn in, testify under oath, just as the third base company executives were a few years ago. But Senator Stevens, the chairman of the committee, refused to allow them to be sworn in. Why? So they couldn't be held accountable if they didn't tell the truth.

Mr. President, I believe Senator DURBIN's comments are a direct violation of rule XIX. I did not swear in witnesses who appeared before our committee because they are required to tell the truth under law.

Those are the rules of the Senate, the rules of our committees. To suggest I did not administer an oath to these witnesses to help them lie to Members of Congress is false, inexcusable, and in violation of rule XIX, the longstanding practice of Senatorial courtesy, and I expect an apology from the Senator from Illinois.

What is the status of the time now in terms of control of time?

The PRESIDING OFFICER. The time until 2:30 is controlled by the majority.

Mr. STEVENS. Mr. President, under the conditions that if the Senator from Montana would yield to our colleagues on this side if they come to make a statement on the bill, I yield to the Senator from Montana.

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

The Senator from Montana is recognized.

COMMERCE-JUSTICE-SCIENCE CONFERENCE REPORT

Mr. BAUCUS. Mr. President, first, I thank my friend from Alaska for his courtesy in working out this accommodation.

I rise to speak on the Commerce-Justice-Science appropriations bill conference report that might be coming before us later on this day for a vote.

I must say I am outraged. This bill makes further cuts to critical programs that help local law enforcement fight methamphetamine nationwide. These cuts—and they are dramatic—have a particularly damaging impact on my State of Montana. Why? Because we are a rural State. We have very limited resources.

When I ask Montana law enforcement officers what is the No. 1 law enforcement problem they are facing, an open-ended question, they all come back with the same answer: methamphetamine. That is the biggest problem Montana law enforcement officers have.

The Byrne grant program and similar programs support most of the proactive drug enforcement in the 56 counties of my State, and I dare say that is true for a majority of States in this Nation.

Why is Byrne grant money so important? Again, it is because we are spread so thin across a vast area in Montana, a small population with an international border. An adequately funded Byrne program, particularly when combined with a high-intensity drug trafficking area, or HIDTA program, is essential. These programs are critical to help us maintain our seven multi-jurisdictional regional drug task forces, which have been a huge boon to successful efforts in Montana to fight methamphetamine.

Let me give an example. In eastern Montana, we have what is called the Eastern Montana Drug Task Force that is based in Miles City, MT. We also have the Tri-Agency Drug Task Force in Havre that is near the Canadian border. We have a third drug task force in our State, and that is the Big Money Drug Task Force based outside of Wolf Point. They all rely entirely on Byrne funding. These task forces also happen to cover some of the most open, most rural areas in my State where meth enforcement is particularly challenging.

This Commerce report that is soon to be before us guts the Federal Government's commitment to State and local law enforcement. It funds the Byrne grant program at just $416 million for this next fiscal year. That $416 million may sound like a lot of money, but it represents a nearly 35-percent cut over current year funding. We are cutting this law enforcement program by 35 percent.

Is that bad? That is terrible. But it is even worse because that 35-percent cut is on top of a 26-percent cut in funding in reallocation of local law enforcement resources that occurred in 2005. First we had a 26-percent cut last year. Now this is a 35-percent cut on top of the 26-percent cut.

This bill cuts the Community Oriented Policing Services, otherwise known as COPS. That is cut by one-third and provides no funding for communities to hire additional police officers.

According to the president of the Montana Association of Chiefs of Police, COPS funding is necessary to maintain an adequate number of police in the field to protect our communities. One law enforcement officer back home told me that without COPS funding, the number of crimes, especially violent crimes, begins to rise again. Currently, there is no other alternative to the COPS Program. He tells me that the COPS Program is one of those programs that works, one of those programs that is directly responsible for protecting our communities and for getting officers out on the street to protect us all. COPS works. We all know the COPS Program has worked, particularly for us in rural States.

So I ask, where are our priorities? The Senate did its job. We sent over a bill to the House that contained nearly $900 million for the Byrne program, yet somehow we will end up later today with a conference report that funds this program at close to a paltry $348 million. We had $900 million. The conference report comes back at $348 million.

Where were our Senate conferees? Why did they not stand up for the Senate version? Why did they not stand up for the Senate?

The Montana Narcotics Officers Association has told me that if the House version of the CJS bill is passed, this would gut Montana's meth enforcement abilities, especially in rural areas. They told me this would result in an elimination or a dramatic reduction in services provided by Montana's regional drug task forces.

The 26-percent cut in Byrne funding in this last fiscal year resulted in nearly a 50-percent cut in Byrne funding for the entire State of Montana, and that is because of a block grant allocation which has that result.

I frankly cannot believe we are being asked to support a conference report that has cut law enforcement, especially in the areas to fight methamphetamine enforcement, as much as we are asked to.

I am also very disappointed that this conference did something else which I think is a very bad idea. What did they do? They did not accept the Senate-passed combat meth bill. What was that? That bill would put certain methamphetamine ingredients behind pharmacy counters nationwide. We all know that the precursors of methamphetamine over the counter in drugstores are a big inducement for meth manufacturers to take these ingredients and go to local labs out in rural areas and make methamphetamine. It only makes sense that these methamphetamine precursors not be sold over the counter but only sold by prescription or at least behind the counter so there is much more control over the purchase of those ingredients. We passed that in the Senate. What did the conference do? No, they did not adopt it.

Let us look at what this conference report says with respect to rural States that are trying to fight methamphetamine. I might say it is not just rural States; it is most States trying to fight methamphetamine.

First, it did not take up and agree to the combat meth bill. The precursor provisions are not in here anymore. Willy-nilly, they are out of there. It also dramatically cut the Byrne grant money, which is so important.

I made a good part of my job in the Senate devoted to fighting methamphetamine. I have gone to a lot of these drug task force meetings. I go to many assemblies in Montana with high school and middle school students. I put on these programs that show how bad methamphetamine is. I have law enforcement officers there during these sessions with middle school and high school students. I have counselors there. We go over what has to be done to fight methamphetamine.

Again, a reminder, methamphetamine is the No. 1 law enforcement problem in the State of Montana, and I am sure that is true in a lot of other States as well.

I ask for a show of hands at these assemblies. These are schoolwide assemblies. I ask: How many of you here know of somebody who is on meth or recently on meth? Fifty to 70 percent of the students' hands go up. It is such an outrage. We talk about pandemics with the Asian flu. I might say we certainly have an epidemic with methamphetamine. In a certain sense it may be a pandemic. It is a huge problem.

If we are going to fight it—and I hear in my State of Montana, and I am sure the Presiding Officer hears the same thing in his home State of South Dakota—we need to have dollars out in the field to fight methamphetamine. There are all kinds of ways to attack this problem, but certainly dollars out in the field on the law enforcement side are absolutely critical. It is essential, and they are not in this bill.

We need a lot more prevention efforts. That is clear. We need more counseling efforts. That is clear. We need drug counseling and other ways to get people off of methamphetamine. We also need the law enforcement there to catch the bad guys who are doing it.

In a certain sense, this conference report is a huge victory for the druggies. It is a huge victory for those who are peddling methamphetamine in America because they know if there is much less law enforcement, if the dollars are not there to stop them, they have an open field. They are not dumb. The big drug manufacturers and peddlers are not stupid. They know where they can go. They know where there is law enforcement and where there is not.

When I talk to local drug task forces in my State, it is so clear to me how desperately they need these dollars. They beg me for these dollars. That is why I have offered amendments in this body to provide funding to fight methamphetamine.

We passed legislation in the Senate. We have been doing our job. But for the Senate conferees to come back with a conference report which allows all of these antimethamphetamine efforts to be gutted and to be diluted and cut back and ask us to vote for that conference report I think is an outrage. For that reason, I strongly oppose this conference report. It is a bad idea. It is going to allow more methamphetamine in our country, one of the biggest problems this country has.

This is a victory for the drug dealers. It is a big victory for drug dealers. They know where they can deal drugs. They know where there is law enforcement and where there is not. When we start to cut back money—not status quo but cut back law enforcement dollars—that is going to be a huge problem. I very much hope this Congress finds a way to redress this imbalance, to deal with this problem so we can adequately fight methamphetamine.

I have all kinds of PSAs running in Montana, public service ads, against methamphetamine. I have been working in schools to get rid of methamphetamine. There are other people in Montana who are paying a lot of dollars out of their own pockets, with very effective antimethamphetamine ads. Part of the solution is to make sure we have adequate law enforcement. I strongly urge my colleagues to not agree to this conference report until this problem is solved.

I ask unanimous consent that a letter from the National Sheriffs' Association be printed in the RECORD.

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

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, November 10, 2005.

Hon. THAD COCHRAN,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the National Sheriffs' Association (NSA) and our 23,000 members, I am writing to express our extreme disappointment and concern over the lack of funding for the Edward Byrne Memorial Justice Assistance Grants Program (JAG) in H.R 2862, the Science, State, Justice, Commerce and Related Agencies Appropriations Bill.

The JAG program, which was formed by consolidating the Edward Byrne Memorial Grant program and the Local Law Enforcement Block Grant program, is one of the primary Federal assistance programs for State, tribal and local law enforcement agencies. State and local law enforcement agencies, including the 3,087 sheriffs' offices across the country, rely heavily on JAG funds for critical operational activities. JAG funds support many of our counter-drug activities, particularly drug task forces. Without these funds, our sheriffs will not be able to sustain the task forces or even fight the war on drugs!

Local law enforcement agencies from all across the country are already out-manned and out-gunned by the drug cartels and street gangs in our communities. Over the last several years we have been forced to deal with the loss of personnel, because of budget cuts to the COPS program. Now the COPS Universal Hiring Program has been zeroed out by Congress, thus abandoning an effective program, and the JAG Funds are being cut as well. These cuts will put an end to any progress that has been made and destroy any hope we might have of winning the war on drugs or ridding our communities of methamphetamine!

For more than a decade, the resources provided under the JAG program have allowed law enforcement agencies to expand their capabilities and make great strides in reducing the incidence of crime in communities across the nation. It is our belief that the lack of Federal support for local law enforcement will surely result in increased crime and drug abuse!

The conference agreement would provide just $416 million for the Byrne Memorial Justice Assistance Grants, of which only $321 million is available for local law enforcement assistance. This represents a cut of more than $217 million or 34 percent, from FY 2005 levels. We find this level of funding to be unacceptable and believe that Congress is failing to adequately recognize the mission of law enforcement!

Cuts of this magnitude seriously inhibit law enforcement's abilities and endanger the safety and well being of our communities! In order to keep communities safe from crime and free of drugs, law enforcement agencies must be given the resources they need! The FY06 SSJC appropriations bill does not provide for those resources.

At a time where law enforcement and securing the homeland should be of the highest priority, Congress has chosen to completely dismiss them as a priority! With the rise of terrorism, and the fact that methamphetamine use and abuse has risen to epidemic proportions, Congress should embrace law enforcement, support the JAG program and COPS Hiring Program, and increase their funding, not cut their funding!

Sincerely,

THOMAS N. FAUST,
Executive Director and Retired Sheriff, Arlington County, VA.

Mr. ISAKSON. Mr. President, I ask unanimous consent that Senators CARPER, SALAZAR, and NELSON be added as cosponsors to the Isakson amendment on the pension bill.

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

Mr. ISAKSON. I yield the floor.

Mr. ENZI. Mr. President, I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman. I appreciate very much the chairman bringing this pension reform bill to the floor. As a Senator from a State that has several major airlines, three headquartered in my home State of Texas, I know this is very important for them. It has been worked on for a long time. I appreciate the efforts of the distinguished chairman in this regard.

JUDGE ALITO

I also want to take this opportunity to answer some of the things that have been said in the Chamber today, particularly about Judge Alito, who is the President's nominee for the Supreme Court of the United States.

It has been implied in the Chamber today that maybe he doesn't deserve an up-or-down vote. After all, Harriet Miers didn't get one.

I am the perfect person to say I think Harriet Miers should have gotten one. I do believe Harriet Miers was qualified for the Supreme Court. If she had been allowed to open her mouth and say what she believed and talk about her experience, she would have been confirmed, and she would have been a superb Justice.

However, Harriet Miers didn't get an up-or-down vote because she withdrew her nomination. She withdrew it voluntarily. It was her decision. I was sorry she did. I didn't want her to make that decision. But to imply that all of a sudden now we have a new standard, that Judge Alito doesn't deserve an up-or-down vote, is absolutely wrong and it must be refuted. Judge Alito does deserve an up-or-down vote just as every nominee for the Supreme Court of the United States who has gone through the committee and come out deserves an up-or-down vote. The idea that seems to be creeping in here is that, maybe for the first time in the history of the United States, there might be a filibuster, a partisan filibuster of a judge, a nominee to be Justice for the Supreme Court of the United States. That would be a terrible thing for the United States of America, for the President, and for the Senate of the United States. It would be wrong for everyone concerned. It would set a precedent that I believe would cause partisanship in this body to escalate to a degree that we do not want to see happen.

Partisanship has already escalated in the Senate. I am sorry that it has. But I think there are many instances where we work in a bipartisan way in the Senate, and we accomplish a great deal when we do. So I think the idea of throwing a bombshell into the Senate and breaking all tradition and all precedent and filibustering on a partisan basis a nominee for the Supreme Court who is reported out of committee is wrong, and I hope the hints of that happening are wrong. I hope they are put to bed. I hope we will give this judge his due.

This man is qualified for the Supreme Court of the United States by any standard. He has an academic record that is excellent. He has years of experience as a circuit court judge. He is very well regarded as a circuit court judge. His opinions are reasoned. He has even gone against what are his stated personal beliefs in order to adhere to precedent and give great respect to the law of the land. He is everything we are looking for in a Supreme Court nominee.

When he has his hearings and he has the chance to answer the questions of the Judiciary Committee and he is then voted out of that committee, even a suggestion that he doesn't deserve an up-or-down vote is outrageous. I hope we can stamp out those little feelers, say this was a misunderstanding, that Judge Alito most certainly is a nominee deserving of an up-or-down vote in the Senate if he is, in fact, voted out of the committee.

AMENDMENTS TO THE IRAQ RESOLUTION

I also want to take this opportunity to discuss an amendment that was agreed to yesterday by the Senate regarding the Iraq resolution. There has been a statement on the floor today saying that this was a rebuff of the President's policies. The rebuff was to the amendment that was put forward that would set a timetable for a withdrawal, that would call on the President to say on a date certain we are going to withdraw troops from Iraq.

I have been one in the past who has said we should have a game plan. We should have an exit strategy. I have said that when we were in Bosnia. I said it as we are in Iraq. I said it about Afghanistan. It is a legitimate role for the U.S. Congress to say: Mr. President, give us an update on where we are and give us what we can expect to see. That is exactly what happened. It was not unusual.

When we are in a conflict overseas with our troops on the ground, it is not unusual that the Congress would ask for a report on the status of the conflict. Most certainly it is fair to ask for a report. The President welcomed that because he knows the role of Congress, just as we do. Those who would characterize that as a rebuff are wrong. The President knows how tough this situation is. All of us do. Every one of us grieves when we lose one American life. But I will say I could not be more proud than I am of our Armed Forces, our men and women who are fighting for our freedom today as we speak in this Chamber, because those with boots on the ground know that if we set a time prematurely when we would exit, we would embolden the enemy they are facing today. We would say to the enemy: Have at it. No matter what happens, we are out of here on a date certain.

Don't you think that puts the lives of those troops who are on the ground right now in jeopardy? The idea that we would do something like that is appalling. The Senate didn't do it. The Senate voted down an amendment. The Senate rebuffed that amendment because it was wrong. Instead, we did what is the role of the Senate to do, and that is we asked the President for a status report. We asked the President for the game plan for the future. Of course, the President is going to do that. He has been doing that. We have had briefs on the situation in Iraq and briefs on what the next step is ever since we went in to Iraq.

Of course it is the right of Congress and the role of Congress to ask for this. The President understands that and actually said he was very pleased that the Congress did that and that he would, of course, do that type of report as he has been doing on a regular basis in various ways, through the Secretary of Defense, through the Joint Chiefs, the Chairman, and the Ambassador to Iraq from the United States. We have had reports from all of these people on the status. We have seen the votes that have been taken in Iraq. We have seen the progress.

I think it is important that we set the record straight. On this floor this morning, I think there have been some statements that needed to be refuted, and that is what I have attempted to do.

I thank the chairman of the committee for allowing me this time and thank him for bringing this pension bill to the floor. It is a very important bill. It will mean a lot to the employees in my State and the employees throughout our country in airlines that are struggling right now. This is an industry we need to protect.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I yield myself such time as I might consume. I thank the Senator from Texas for coming to the Chamber and making the comments on pensions, and I appreciate all the work she has done, particularly in the airline area. I don't think there is a single airline that doesn't fly into Texas. I appreciate all the concern she has shown over all the various issues. There are certainly a lot of them in this 730-page bill.

I also thank her for the comments on the other topics because, while the time today was supposed to be for debating the pension bill, I guess the disadvantage of having one that is as bipartisan as this and as much concern to all the employees and businesses of this country is that we didn't have that much opposition today. So people came in with other topics.

I want to address one of those that came up that disturbs me a little bit, and that is the comments about a Katrina Commission.

The Katrina disaster and the others that followed it were bigger than anything we had ever had in this country. I have to tell you that I think there is enough blame to go around on it. If people want to point fingers, it goes the whole circle. The biggest problem with it was we had never seen that many displaced people in one single disaster. There were a million people displaced in that disaster, and 200,000 was the previous record—not that those are the kinds of records we like to keep.

A couple of weeks before Katrina, there was a tornado in Wright, WY, 38 miles south of my hometown. I happened to be there at the time. I spent a lot of time in Wright seeing how the recovery went and seeing what FEMA did. I didn't have much of an idea what FEMA is supposed to do. It was kind of astounding to me. They are the group who comes in after the disaster. They are not the prevention group. They are the after-disaster folks. They come in and register all of the victims of the disaster. Then they help those victims get coordination to find every source of help they possibly can.

This disaster was a lot different than any of the ones before. A lot of times, when there is a disaster in one town and people are displaced from that town, they can move to their friends and relatives in the next town. But in this one, not only did their town get wiped out but the towns of their friends and neighbors and relations got wiped out as well; and so did the next town and the next town. They wound up moving to completely different States.

You can't see those boundaries of States when you drive down the road. There is usually a sign that says ''Welcome to Wyoming'' or Louisiana, whatever State it is. There isn't any physical line that is drawn, but in everybody's mind there is a tremendous mental barrier of crossing a State line and being in unfamiliar territory.

That happened in this instance, and States are saying those are residents of another State that we are supposed to take care of; people from another State are saying, I am not real comfortable being here, but I am here. What can you do to help me? It was even hard to locate people.

The size of the disaster was tremendous. I think I am in a position to complain about anybody complaining about how it all went because I am from the committee that proposed legislation and actually moved it through the Senate floor. I think the only legislation that has dealt with the Katrina disaster is student displacement, which we had in the deficit reduction bill. We have a health package we are working on, and we hope to be able to move it as well.

There are unprecedented problems with this. We have the opportunity for some unprecedented solutions. They are not the best solutions, but they are the best we can come up with on short notice.

Rather than trying to figure out whose fault it was, I think the whole country has a big problem with this ''whose fault it is.'' We have gotten to the point where, if we fall down, we wonder who caused that and who should pay. We want some kind of retribution for it. What we are doing with that is eliminating some personal responsibility. Everybody has to watch out for themselves and their neighbor and help get ready particularly for events they can see coming. I think people are going to be a lot more responsible on that in the future because of some of the things that happened. But to try to place blame doesn't do much except build divides. We are trying to bring people together.

That is what the pension bill is working to do—bring people together so they can have a secure future, so they can know what is going to happen with their savings and their pensions and how it all comes together. This bill does do that.

It is extremely complicated, with many moving parts. It is hard to have unanimous agreement on anything, but this is pretty close to that. It is because it solves a huge problem. Here again we could talk about what the blame is for the problem.

I actually want to talk a little bit about how we got to the point where there was a problem with pensions. I am not going to go into some of the things mentioned before about how the negotiations went and drove up the amount of benefits people were receiving. Instead, I want to talk a little bit more about the core problem we have; that is, after September 11, 2001, the economy went in a little different direction than we had anticipated—in fact, drastically different than anticipated.

Two things happened at the same time: Both the interest rates and the stock market went down. Usually, when interest rates go down, the stock market goes up and people take their money out of the low-interest mechanisms and put it into the stock market which grows faster because there is more money coming in there, which is driving up the price of the stock. But after 2001, both the interest rates and stocks went down. There was no possibility of taking the money from the pension and hedging it anywhere, of moving it so they would have more income. So the income dropped drastically and investments dropped drastically. That put the companies in a position where those who had fully funded plans no longer had fully funded plans. It wasn't because they stopped putting money in or taking money out. It was because it didn't grow at the rate that had been anticipated before. That created a lot of problems. That is not to say there weren't some problems, but primarily the problem came from the stock market and the interest rates dropping at the same time. The good news is that interest rates, as far as pension plans—and some senior citizens' savings and other people's savings—the good news is the interest rate has been going up. That has not been a help to the stock market, but that has been a help to those people who have money in savings accounts. It has been a help to pensions because the annual statement that just came out by the PBGC for their fiscal year 2005 financial results show they actually had a net gain of almost $.5 billion for last year. That isn't because the PBGC was better. That is because firms were able to generate more revenue for their pension funds. There are a lot of things at work in this.

Another thing that was mentioned this morning that I want to clear up a little was a relationship people draw—the relationship between the Pension Benefit Guaranty Corporation and the savings-and-loan debacle. We have two different ways of paying out here. They are dramatically different. For one thing, when people have money that is ensured by the FDIC and a bank fails, people take their money now. It is an immediate crisis—to the total value of their ensured deposits. With the Pension Benefit Guaranty Corporation, they are guaranteeing that people will get a portion with a cap of what they have coming in pension at the time they would have received it. It is long term. It isn't an immediate disbursal of whatever money they have in that account. It is a disbursal over time at the rate at which they would have received the pension, which would be the rest of their lifetime, as opposed to an immediate withdrawal like savings and loans.

We have another problem that is coming up here shortly. That is when the stock market and the interest rates both went down, they created a crisis. It was not a crisis of bad management as much as this difficulty with the stock market. Recognizing that crisis, we passed some legislation. But it was temporary legislation to allow for some recovery of the economy and the market and that sort of thing, to get things back in balance. That temporary piece of legislation runs out December 31 of this year. We need to have in place something that will continue to encourage the companies to put more into their pension funds, to add to the solvency of their pension funds, to bring them up to the level they are supposed to be, without putting them out of business. We need something that will fill in for these temporary rules that are running out, something that does the job, I hope, better.

We have had some time to review the whole situation and come up with this bipartisan solution.

One of the difficulties during this discussion was over an item called ''credit rating.'' There is a provision in the bill that calls for companies to have to put in considerably more money once they get a bad credit rating. I am counting on that being something we work on in conference committee. We all operated on a principle, and the principle we operated on was we want to know when a company is having difficulty, and we want to know it early. We want to have them make sure their pension for their employees is protected at the time the business starts to go bad.

That was the principle from the White House, that was the principle of the HELP Committee, that was the principle of the Finance Committee, and we tried to arrange a way to do that.

One of the things on the surface that looked like a good idea was credit rating. When they get a bad credit rating, it forces them to bring more solvency into their fund. The idea is once they get a bad credit rating, they cannot put more money in the fund. They are in a very bad situation when they are listed as a junk bond situation already. In fact, one of the difficulties with the credit rating is it is not done by people in the company or people in the Government. It is done by some other experts who look at what they have access to and make decisions about the company. Sometimes they probably get it extremely right, and sometimes they can get it wrong. But that doesn't matter. What matters is if a company gets rated at a junk bond status, they can virtually never get out of that. Why can't they get out of it? One reason is the person who analyzed the thing and who may have replaced a new employee is a little bit reluctant to sign his name to say this company is OK. It is the ''protect yourself'' kind of attitude. So you don't let them out of the junk bond status, which forces them to make the payments perhaps longer than they ought to have to at that rate, and in fact keeps them in junk bond status. It is a kind of cart-and-the-horse sort of situation—they keep getting one in front of the other and impeding the progress toward what we don't want.

What I am hoping we can do in the conference committee is to find another way that is not the credit rating way but a way that the company will realize and start to correct on this point where they were starting to go downhill, and then also be able to know when they have recovered so we don't force them into bankruptcy. We are asking people for solutions, and we have had a number of them suggested.

Again, I thank Senator DEWINE for his efforts in this area. Senator DEWINE and some of the folks—particularly some manufacturing companies that are involved in this kind of a situation, where some of them even have 100-percent funded plans, but they are in junk bond status. Consequently, even though their funds have a lot of funds, they get different requirements that will escalate the problem and not provide a solution.

That is one of the things particularly I am expecting we will take a look at when we get in conference committee. I think there is a way for all of us to come up with a solution that will work and meet that basic principle of locating companies when they begin to have trouble and make sure that as much solvency is put into the pension plans as possible.

I also will mention that in the deficit reduction bill we passed last week, there was a section that dealt with pensions. I want to reassure everybody that there is the clause in the deficit reduction bill that says if we pass the full pension bill—that means the House and the Senate actually conferring and coming to an agreement and getting a full pension bill signed—that what is in there will modify the pension.

Under deficit reduction, our hands were kind of tied on the options we have to meet the requirements of reconciliation. Under those requirements, all we could do was raise rates to the company. We had to do that considerably higher than we would have had to, had we some of the tools which we have under the full pension bill.

Now, there may still have to be some numbers tweaked on that to meet the requirement that we set for ourselves. We set in the budget a requirement we need to have a $6.6 billion deficit reduction on the Pension Benefit Guaranty Corporation. We needed to reduce potential outlays by the corporation so that it would be solvent or moved toward solvency.

I mentioned this tale that there is on pensions so there was not a need to come up with $22 billion this year. It can be done over a period of years. In that deficit reduction bill, there is a paragraph that says if we pass a full bill, the full bill takes precedence over the deficit reduction package, so it will not be nearly as much of an increase for the company using that as if we went with the deficit reduction.

I thank everyone for the cooperation we had on the deficit reduction part and in coming up with that.

I want to add my words to Senators Kennedy and Mikulski as they challenge the House to get their bill done. Getting our bill done by itself does not complete the process. It requires that the Senate and the House pass a bill that is the same which means they have to hurry and pass one; we have to conference it and, hopefully, have this done when we come back shortly in December. If not, very quickly after the first of the year. As I mentioned, December 31st is the expiration of the previous formulas.

I need to thank and commend a few people. This has been a lot more complicated and a lot more difficult than the discussion today might seem to indicate. The reason we have had as little discussion and as little opposition today is because people put in a lot of hours to understand what was going on and focusing on principles so we could arrive at a solution for pensions. I commend the work of the staff on this bill. Particularly, I commend my HELP Committee staff. Katherine McGuire is the director of the committee and did an outstanding job of juggling multiple interests and bills. Somebody suggested that we were not a committee, we were a bill factory. If you look at the work that has come out of the committee under Katherine's direction and the cooperation of both sides—near unanimous consent on almost every bill—we have had a very productive year. This bill is one of those indications.

When the President listed his top 10 priorities, my committee had 21 of them. That is largely because in the HELP area he listed one priority, and that turned out to be 16 bills in my committee. We are progressing through those, as well. We are hoping to be able to come up with lower cost health care but with better quality and access. That is a major challenge of this country. We have had double-digit inflation on health care for years. I have a lot of faith in the committee and in staff in what we have been able to do so far.

I also commend Diann Howland and David Thompson. These are my two experts in this area of pensions. I mention that one of them had a lot of experience on the Committee on Finance staff and one of them had a lot of experience on the HELP Committee staff. It was fortuitous we brought these people together with this expertise and have them on the same side working to both come up with the ideas and merge the bill. They probably have, combined, about 20 years' worth of experience on this bill alone.

I congratulate Gregg Dean, who brings the banking knowledge to the debate, and Amy Angelier, who brings the budget expertise to it. Ilyse Schuman does an outstanding job with the legal work we have to do on the bill. I also commend Portia Wu, Holly Fechner, and Terry Holloway of Senator KENNEDY's staff; John O'Neill of Senator GRASSLEY's Committee on Finance staff; Judy Miller and Stuart Sirkin from Senator BAUCUS's staff. We all owe our thanks to Jim Fransen and Stacy Kern of the Legislative Counsel's Office, who drafted numerous versions of this bill and all of its predecessors. A very special thank you is owed to the staff of the Joint Committee on Taxation for their advice and guidance. The staff of the Joint Tax includes Carolyn Smith, Patricia McDermott, Nikole Flax, and Allison Wielobob. Last, but not least, I thank Karla Carpenter of Senator DEWINE's subcommittee for her diligence and Ellen-Marie Whelan and Ben Olinsky of Senator MIKULSKI's staff for all of their hard work. That subcommittee did an absolutely marvelous job.

The way we have our subcommittees set up is pretty much along the lines of the title of our bill. We have some spectacular subcommittee chairmen and ranking members who are out there working on projects. That is the only reason we are able to produce as many bills with as much bipartisanship as we have done.

I also thank Glee Smith, Mike Quiello, and Ed Egee of Senator ISAKSON's staff for their fine work on this airline amendment.

We are about at the point where we will vote on the amendment. I express my opposition to the amendment because I don't think it is fair to the other people who would be getting pensions. I appreciate Senator AKAKA's tremendous effort to try and find a solution for pilots. But as we find the solution, we have to be sure we are finding the solution for everyone. I ask Members to vote against that amendment and for the pension bill as a whole.

I have some remaining time, and I am happy to yield some to the Senator from Massachusetts, who has been absolutely wonderful to work with on this issue. He has tremendous institutional memory on this and has worked on parts of this problem for years. There were numerous times I went to him and asked: What would you do in this situation? And he told me. I think we found that the shortest distance between two points is a straight answer. We have been able to come up with some answers together and I appreciate that cooperation.

I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I know we will be voting soon. This is a reflection of a legislative process working and working well. We have been fortunate in our committee with Senator ENZI, at the beginning of this whole process, examining the pension issues which have not been dealt with seriously since 1994, at the time of the GATT agreements. So much has changed since then.

We had an openness and a process that has worked through the Committee on Finance in a similar kind of way, Republicans and Democrats working alike. And now, in a short period of time, we are going to pass legislation this evening that is going to give millions and millions of Americans and hundreds of thousands of companies a real sense of hope about their retirement future.

I certainly hope the House of Representatives recognizes the strong bipartisan support we have had for this proposal and follow a similar path.

Finally, we know that workers have enormous insecurity today. They are concerned about the increased costs of gasoline, their health care costs, their job security, the education security of their children, and the security of their retirement. This legislation is focused on retirement security. We all believe in a strong Social Security Program and we all believe in savings. But we all know those savings are down and Social Security is going to need focus and attention over the next years.

This legislation is the backbone to providing help and assistance and assurances to workers about the safety of their retirement programs. It provides innovative and creative ways to deal with the challenges women have presented in terms of the workplace, a much greater sense of equity, much greater protection and information for workers so they can make the appropriate decisions, help and assistance so the good companies can meet their responsibilities to their workers.

We are very much in debt to all of those on our committees—the Senator has mentioned them—and Senators MIKULSKI, HARKIN, and BINGAMAN on the HELP Committee, and our Republican colleagues. I again thank our chairman of this committee. It is a very important piece of legislation that will make a big difference. I thank him and I thank the chairman of the Committee on Finance, Senator GRASSLEY, and my friend, Senator BAUCUS, as well. We have been able to work together.

It is difficult enough around here to get people in your own party to agree on something, I find, and then to get both parties to agree and then two committees to agree on something is remarkable.

All Members understood the importance to American families in this country. They are being challenged about their retirement security. It brought out the best in the membership. I strongly support this legislation. I thank my chairman for all he has done.

To review quickly, this requires the companies to fund all of their pensions. It gives the workers timely and accurate information on the pension plan.

It protects older workers in cash balance plan conversions. That is enormously important. It gives independent investment advice so workers can have information to make solid judgments. It guards against the exploitations we have seen in too many instances, where the CEO's have looked after themselves and failed to look after workers. And it does provide the retirement security for widows and former spouses, which is enormously important. Senator SNOWE, myself, and others have been working on that issue for years.

This is a balanced, well-formulated program that is addressed to meet the needs. I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I yield myself a couple of minutes. I thank Senator KENNEDY for his outstanding charts and summary of what we are about to do. I thank Senator BAUCUS for the outstanding work he has done in dealing with this issue this morning and on the Committee on Finance. I thank Senator GRASSLEY. It has been great teamwork to get to this point. I am looking forward to the vote we have in about 2 minutes.

I yield a minute to Senator BAUCUS and then a minute to Senator AKAKA so he can summarize his amendment.

Mr. BAUCUS. Mr. President, I reinforce a theme that has been in the Senate, working together in bipartisanship. I have thought I am one of the luckiest Senators here because the chairman is Senator GRASSLEY, a great Senator to work with. We work very closely together. That is not rhetoric. That is true. That is accurate.

The same is also true with Senator ENZI, the chairman of the HELP Committee, and Senator KENNEDY. They work very closely together. Not only do they work well together, here are two committees working well together.

A lot of Americans think there is a lot of partisanship in Washington. There is. There is too much. But there are also pockets of cooperation. We are witnessing today one of those pockets, one of those times when we are working together. I take my hat off to the chairman of the HELP Committee, the chairman of the Committee on Finance, Senator KENNEDY, and the staffs. This is an effort to solve a problem in a nonpartisan way.

I thank the chairman.

The PRESIDING OFFICER. The Senator from Hawaii.

AMENDMENT NO. 2583

Mr. AKAKA. Mr. President, my amendment corrects a wrong. Pilots have their promised pensions significantly reduced when the PBGC takes it over. The FAA mandates that the commercial pilots retire at 60. We must take the steps necessary to ensure that the PBGC will have resources to be able to help pilots whose retirement security has been threatened due to the pension takeover and prevented from continuing their careers. This penalty combined with the FAA mandate produce an overly harsh result that hurts pilots and their families when they lose their pension plans.

My legislation only affects pilots. Pilot plans have been some of the largest pension plan terminations in history. Again, the FAA mandates that they retire at 60 and the PBGC's early retirement penalty occurs because they cannot continue to fly past age 60 commercially. My amendment will bring about much needed relief for United Airlines, US Airways, Aloha Airlines, TWA, Eastern Airlines, and Braniff pilots. It is important to note that pilots are the only private sector employees required to retire at the age of 60. I urge my colleagues to support my amendment.

I thank my cosponsors, Senators SPECTER, FEINSTEIN, SALAZAR, and INOUYE, for working with me on this amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I allot myself some time in opposition to the amendment. I appreciate Senator AKAKA proposing the amendment, but I have to rise in opposition to it for a number of reasons. The biggest reason is the amendment changes how the Pension Benefit Guaranty Corporation calculates benefits for any one class of workers, which would be airline pilots. It is unfortunate that so many airlines have gone into chapter 11 bankruptcy and so many pilots have seen reductions in their pensions. Flight attendants and ground workers also deserve our attention, not just pilots. This carveout for pilots, who are some of the most highly paid professionals in our country, is unfair to other workers who also retire early but happen to have devoted their work lives to other positions in the industry.

Pilots are not the only workers who have expectations of subsidized early retirements. Many machinists, steelworkers, and autoworkers have early retirement benefits which are reduced under the ERISA guarantees. A retiree from any one of these industries has the same complaint as a pilot when his or her company goes bankrupt and dumps its pension plan on the Pension Benefit Guaranty Corporation. The steelworker or the auto parts maker has less notice that a problem could arise if the company went broke. Pilots know, when they start their careers, that they will not work past age 60 and pilots can plan accordingly.

The shortfall confronting pilots of bankrupt companies is not the result of a change in law. The limit on the PBGC guarantee has been on the books for years. Commercial airline pilots who are universally unionized have negotiated over these benefits with their airlines. The fact they retire at age 60 is factored into the structure of their plans. Pilots know they will likely stop flying before reaching normal retirement age of 65. That is why they negotiate rich retirement benefits on top of their high salaries.

It is too harsh to suggest that they in any way assumed the risk that their plans would fail, but it is well known that pilots are some of the most cautious and savvy investors. Risk is something they always anticipate.

On the merits, therefore, the Akaka amendment is unfair to other similarly situated workers and overlooks the fact that they have been before the parties for many years.

But, more important, this amendment at this time is kind of the ultimate non sequitur. This amendment on this legislation just does not follow. It does not fit. The Akaka amendment actually increases the deficit of the Pension Benefit Guaranty Corporation on a bill designed to save the agency from insolvency.

The PBGC estimates that if this provision were applied just to the United Airlines pilots plan, the unfunded guaranteed benefits in the plan would increase by more than $400 million. Additionally, if United pilots would cost $400 million, the cost to the PBGC for all pilots plans would probably exceed $1 billion. Ultimately, the cost is not borne by the PBGC, nor is it borne by the U.S. taxpayers. I hope my colleagues are well aware by now that the full faith and credit of the United States does not stand behind the PBGC. The additional $1 billion in new debt that the Akaka amendment would impose on the PBGC would be borne by all the other companies that sponsor and fund defined benefit pension plans. In this bill, we are already increasing the burden on those companies by about $4 billion through new premiums. Adding another $1 billion in debt is unfair and irresponsible, so I urge my colleagues to oppose the Akaka amendment.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent for 30 seconds.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I made a grave error. I mentioned the tremendous juggling job that Katherine McGuire, my committee director, has done, but I failed to mention Michael Myers, who is the staff director for Senator KENNEDY, who has been part of the juggling act on all of these bills as well, and has done a fantastic job. I apologize for that grave oversight and do want to thank him for his efforts.

I yield the floor and yield back any time.

The PRESIDING OFFICER. Under the previous order, the hour of 2:30 having arrived, the vote occurs on the Akaka amendment, on which the yeas and nays have been ordered.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

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

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 327 Leg.]

YEAS—58

Akaka	Dorgan	Lugar
Bayh	Durbin	Mikulski
Bennett	Feingold	Murray
Biden	Feinstein	Nelson (FL)
Bingaman	Harkin	Nelson (NE)
Bond	Hatch	Obama
Boxer	Hutchison	Pryor
Burr	Inouye	Reed
Byrd	Isakson	Reid
Cantwell	Jeffords	Salazar
Carper	Johnson	Santorum
Chafee	Kennedy	Sarbanes
Chambliss	Kerry	Schumer
Clinton	Kohl	Specter
Coleman	Landrieu	Stabenow
Conrad	Lautenberg	Talent
Dayton	Leahy	Warner
DeWine	Levin	Wyden
Dodd	Lieberman	
Dole	Lincoln	

NAYS—41

Alexander	Domenici	Murkowski
Allard	Ensign	Roberts
Allen	Enzi	Rockefeller
Baucus	Frist	Sessions
Brownback	Graham	Shelby
Bunning	Grassley	Smith
Burns	Gregg	Snowe
Coburn	Hagel	Stevens
Cochran	Inhofe	Sununu
Collins	Kyl	Thomas
Cornyn	Lott	Thune
Craig	Martinez	Vitter
Crapo	McCain	Voinovich
DeMint	McConnell	

NOT VOTING—1

Corzine

The amendment (No. 2583) was agreed to.

Mr. AKAKA. Mr. President, I move to reconsider the vote.

Mr. BINGAMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURR. Mr. Chairman, the proposed Treasury regulation ''safe harbor'' in the Pension Security and Transparency Act of 2005 states:

> The accrued benefit determined under this subparagraph shall be determined under regulations prescribed by the Secretary which are consistent with the purposes of this paragraph and which may require a plan to provide a credit of additional amounts or increases in additional account balances in amounts substantially equivalent to the benefits that would be required to be provided to meet the requirements of subparagraphs (B) or (C).

Mr. Chairman, am I correct in my understanding that the intention of this provision authorizing Treasury regulations is that the Secretary be given the widest latitude possible to approve cash balance conversions falling within the spirit of the conversion requirements?

Mr. GRASSLEY. The gentleman from North Carolina is correct in his understanding of the provision, that Congress intends for Treasury to have wide latitude and flexibility in determining which plans could qualify for safe harbor protection.

Mr. BURR. Mr. Chairman, do you agree that the provision is intended to allow Treasury to consider for purposes of the regulatory safe harbor cash balance plan conversions that are announced 5 or more years in advance, allow employees to continue to accrue benefits under the old formula until the conversion date and thereafter provide full protection for previously accrued benefits as well as the opportunity to ''grow into'' early retirement subsidies under the old formula; and that provide full cash balance plan accruals after conversion without wear away?

Mr. GRASSLEY. The cash balance plan conversion described by the distinguished gentleman would indeed be within the scope of the authority intended for the regulatory safe harbor.

Mr. BURR. I thank the distinguished chairman for this important clarification and for his hard work in developing this important legislation.

Mr. HARKIN. Mr. President, I appreciate that this is a tough, complex bill. I know that the HELP and Finance Committees have worked hard to make this a bipartisan measure and worked to include important provisions to help multiemployer pensions alongside single employer pensions, and I appreciate those efforts. There are some very useful provisions, here, that will help employers to fund pension plans predictably and fully—and to do so when times are good, so we can avoid crash landings when times are bad.

I rise to address the provisions in the bill on an issue very close to my heart: protecting workers in conversions to cash balance plans. I am pleased that we were able to reach a general consensus in this legislation on the cash balance issue. Of course, this compromise is not 100 percent of what I wanted, nor is it 100 percent of what my colleagues on the other side of this issue may have desired. But it is a solid bipartisan compromise. I am coming to the floor, today, to state why I strongly support the provisions in the bill before us, and to explain why I will do everything in my power to oppose any effort to weaken this legislation by giving retroactive approval to cash balance plans that have already been adopted, no matter how badly workers were treated in the conversion.

This is not a hypothetical conversation. Unfortunately, over the last decade, literally millions of employees have seen their traditional defined benefit plans converted into cash balance plans. And, in the process, many have seen their benefits significantly eroded. This erosion of benefits falls primarily on the backs of older workers, who can have their benefits reduced by many thousands of dollars.

The HELP-Finance compromise measure would fix this problem by requiring that, in the future, all cash balance plans must have a strong basic structure that provides some predictable level of wage replacement for workers, and by prohibiting companies from ''wearing-away'' or eroding the value of the benefits of their older workers, including early retirement benefits. Furthermore, the HELP-Finance compromise recognizes the problem workers face when they find the pension plan they had long counted on has suddenly been turned on its head, and gives people a grace period to continue to accrue benefits in the old plan while they make decisions for the future.

I should back up here, and describe this very complicated issue. In the early 1990s, a groundswell of companies started changing from traditional defined-benefit pension plans to ''cash balance'' pension plans. A cash balance pension is a hybrid between a defined benefit and defined contribution plan. Like a defined benefit plan, it is insured by the Pension Benefit Guarantee Corporation, and an employer automatically contributes some percent of an employee's pay to a hypothetical guaranteed account for the worker. This account then earns interest. Most defined benefit plans, however, calculate your benefit at retirement as some percent of your final average pay multiplied by the number of years you worked for the company.

Cash balance plans are different: in a cash balance plan an employer contributes a certain percentage of your paycheck to an account and then credits that account with interest. In that regard, a cash balance plan looks a lot more like your typical 401(k) plan, since you have a hypothetical account that you can watch grow over time.

As I noted earlier, during the 1990s, many companies began moving away from traditional defined benefit plans, and toward cash balance plans, for a variety of reasons. Many companies said cash balance plans would be easier for benefits managers to calculate, and easier for workers to understand. We were told the plans would better serve our Nation's new, more mobile workforce.

Unfortunately, many workers found there was often a different motivation for the conversions: to cut benefits. Older, retiring workers covered by these conversions learned, too late, that their retirement benefit was far less than they had expected.

The pension conversions eroded the benefits employees thought they had already earned. One way to erode benefits was to base benefits on a career average instead of highest years of pay average. It throws pay from when an employee was younger and earning less money into the average used for the pension. The motivation here is obvious. This will reduce the benefits that workers can expect to get toward the end of their lives. Then, it will ''wear away'' the benefits that workers already earned.

What is wear-away? Right now, under pension law, an employer cannot take away money an employee has already earned. If I leave a company tomorrow, I'll get the full value of everything it promised me up to that point. But in a cash balance conversion, as some employers have done the shift from a defined benefit plan to a cash balance plan, they have set up the new account balance at a lower level than the worker had previously accrued or earned in the old defined benefit account. Wear away happens when no new pension funds are added to what was already accrued till the value of the old pension is worn away to reach the level it would have been under the new cash balance plan. The effect? An older worker effectively earns nothing towards their pension for years, while younger workers do.

The length of time it takes for an employee to make up what has been lost is a long time because the wear-away is so significant. Here is a helpful chart from the GAO. This chart shows in the first column, a hypothetical 45-year-old's early retirement subsidy. It is frozen, because the plan is converted. Now, look where she started out under the cash balance formula. It takes her all these years to finally catch up to what she had in the first place. All I am saying is that she should start out in the new plan at the same place she left off in the old plan. Her 30-year-old coworker is getting money added to his account. Why shouldn't she?

The other problem in converting from a traditional plan to a cash balance plan is a complete reversal of the plan formula—so people lose a big chunk of their expected benefits. This is how benefits are accrued under a cash balance plan versus a regular plan. Can you honestly look at these rates of accrual and say that no one thought that there might be a problem for older workers who get caught in the middle, here, and get the downside of both plans? They get the front end of a back-loaded plan, and the back end of a front-loaded plan. Maybe these CFOs are just really bad at math—went to Wharton Business School, but still can't add. I don't know.

Employers are claiming that these are great plans for workers. Sure, they are better than plan termination. But, they turn traditional pensions on their head, taking benefits from older workers and redirecting them to younger folks. Then they say these plans are so terrific for younger workers, but in reality 40 percent of people in these plans never see any benefit at all because they didn't even work at a company long enough to vest.

This is, was, and always will be age discrimination. And it is something that Congress has never before acted to approve. After these injustices were exposed in 1999, I introduced legislation to ban wear-away. While it did not pass, it raised the profile of this problem. That September, the Treasury Department stopped issuing letters of determination stating that these plans meet some basic IRS standards out of concern over how workers were losing out in conversions.

In 2000, the Senate unanimously passed my sense of the Senate resolution saying that it is unfair for older workers to see the benefits they have worked for eroded or worn-away in cash balance conversions. That sense of the Senate state that: ''For a number of years after a conversion, the cash balance or other hybrid benefit formula may result in a period of ''wear away'' during which older and longer-service participants earn no additional benefits.''

It said: ''Federal law should continue to prohibit pension plan participants from being discriminated against on the basis of age in the provision of pension benefits.''

The Senate agreed, in 2000, that: ''It is the sense of the Senate that the levels in this resolution assume that pension plan participants whose plans are changed to cause older or longer-service workers to earn less retirement income, including conversions to ''cash balance plans,'' should receive additional protection than what is currently provided, and Congress should act this year to address this important issue. In particular, at a minimum: (1) all pension plan participants should receive adequate, accurate, and timely notice of any change to a plan that will cause participants to earn less retirement income in the future; and (2) pension plans that are changed to a cash balance or other hybrid formula should not be permitted to ''wear away'' participants'' benefits in such a manner that older and longer-service participants earn no additional pension benefits for a period of time after the change.

In 2003, the House and Senate both passed an amendment to the Treasury-Transportation Appropriations measure to block Treasury from promulgating a proposed rule that would have blessed these plans, because they left room for age discrimination. That provision was changed in conference to instead direct Treasury to propose legislation that would help workers caught up in these conversions, and Treasury did so. Treasury sent up a bill that said you can convert to a cash balance plan, but only if you don't wear away currently accrued benefits, and only if you allow people to accrue benefits in the old plan for 5 years after the conversion. Now this legislation did not go quite as far as my bill, but it did firmly state that wear away is unacceptable. It also acknowledged that these conversions result in a serious loss of expected benefits, and some transition period is necessary to help older workers.

Prior to Treasury Secretary John Snow's confirmation vote, Senator DURBIN and I asked him to come to the Senate and talk with us about his intentions on cash balance. He said that fairness and equity would guide the rule of law, and that he would work to protect the workers. After all, when he was CEO of CSX railroad, he put in a cash balance plan. But he gave everyone who worked there a choice between the old and new plans.

His proposed legislation was much fairer to workers than the regulation that had been proposed during the gap between Secretary O'Neill's tenure and Mr. Snow's nomination.

The HELP-Finance bill continues to uphold the principle that has long been supported here in Congress: Cash balance conversions should only be allowed if they are done right, without allowing companies to gouge older workers.

The bipartisan compromise in this bill guarantees this by prohibiting wear-away in future conversions. It requires employers to give older workers a grace period during which they can continue to accrue benefits in the old plan. It says that, because cash balance plans weren't in fact as portable as advertised, we need to make them vest faster so that they actually do provide the benefits to younger workers that have been advertised.

This compromise is very similar to the legislation proposed by the Treasury Department that I outlined above. It is the exact same language as the Frist-Grassley-Baucus-Lott amendment in the Finance Committee's pension markup. It is an excellent example of finding common ground, which is exactly what we should do on this issue. This is not a partisan issue. Retirement security matters to everyone. Keeping promises to workers is critical to our workplace climate. Likewise, it is important for workers to be loyal to their employers. Preserving this tradition is critical to maintaining a skilled, productive workforce.

Turning to another issue, I am pleased that the managers of this bill have decided not to accept any proposals that would amend the fiduciary standards in ERISA to allow pensions to invest in riskier investments, and engender conflicts of interest for pension fund managers. These proposals will expose the retirement income of millions of pension plan participants and beneficiaries to the risk of loss from self-dealing, conflicts of interest and other abuses that have been prevented by ERISA for the last 30 years. Under current regulations, if 25 percent or more of a hedge fund's assets come from employee benefit plans, including private-sector, public-sector and foreign benefit plans, the investment manager must comply with ERISA. The hedge fund industry would like to weaken that standard greatly by no longer counting public and foreign plan assets and increasing the threshold to at least 50 percent—and as much as 75 percent in some cases.

Part of the reason Congress enacted ERISA in the first place were numerous findings by Congress of pension fund mismanagement. We put fiduciary standards in place to prevent exactly these kinds of conflicts of interests and dangerous financial dealings. I can't understand why at a time when we clearly need to tighten those standards how anyone could work to loosen them.

For too long, pension funds have been seen as a cash cow for CFOs to play with to help bolster the bottom line. Questionable enough when times are good, these methods can be disastrous when investment schemes don't pan out.

I would like to call my colleagues' attention to an excellent article in Congressional Quarterly from September 3, 2005. This article really lays out the basis for much of the so called ''perfect storm'' we are facing today with pension funding. For the past few years, there have been numerous reports about money evaporating from pension plans. According to those reports, pension funds were being depleted through no fault of those who managed them, but simply because liabilities were increasing exponentially because of the sinking 30-year Treasury rate and the drop in the stock market.

What these stories left out, however, is the fact that decisions made by pension managers contributed significantly to the problem. Beginning in the early 1990s, stocks began to make up a much bigger share of plan assets than they ever had in the past. Stocks went from making up 44 percent of pension plan investments in 1980 to 62 percent in 2004.

Why the shift? According to Bradley Belt at PBGC, interest rates in the 90s were generating 25 percent to 30 percent returns to plans—in other words, investing in stocks were generating so much revenue that on paper, these plans no longer looked like a cost to the company, but instead appeared to be generating profits.

But as we all know, what goes up must often come down. This gamble with the pension security of millions of Americans resulted in massive losses when stocks fell. The PBGC is now in crisis in large measure because of these investment decisions—which is why we are here on the floor trying to figure out how to shore it up.

Why do I bring this all up? Some of my colleagues are talking about making it even easier to invest in even riskier investment vehicles. The irony of pushing a proposal backed by the hedge funds onto a bill to rescue a drowning PBGC and revive a struggling defined benefit pension system is beyond comprehension.

This is absolutely not the time to weaken requirements on pension asset investments. It's no secret that we are in the position we are in because of lax standards in the past. Loosening them in the future will be absolutely disastrous.

Mr. ALLARD. Mr. President, today, I come to the floor of the Senate to briefly state my thoughts about a component of the bill under consideration, the Pension Security and Transparency Act of 2005. I commend both the Senate Finance and HELP Committees for their hard work, and tireless efforts to work towards a bill that we all can support.

A variety of Colorado companies, including Arch Coal, IBM, Gates Rubber, and Qwest Communications, have been carefully following the debate on pension reform. These companies are significant employers in Colorado, and they contribute to the State's economy in countless measures. Many companies, including these, have been affected by the recent court decision Cooper v. IBM, and in turn I have been paying particular attention to the development and treatment of so-called hybrid pension plans. Hybrid pension plans, a combination of a defined benefit and defined contribution, were ruled illegal by one judge, saying that they were discriminatory based on age, since younger workers had more time to accrue more value in their pension than older workers. Since the court decision, IBM and many other companies with similar hybrid plans have been trying to interpret the court's ruling, and the future direction of their pension plans. These companies are trying to do the right thing for their workers. Currently, they are caught in a situation that does not give them any clear guidance or direction on how to help their employees.

As this bill is currently written, it does not provide the necessary validation for the 1,700 existing hybrid pension plans and their 9 million participants and opens the door for more litigation for more companies. If new conversion mandates are put into place, many of these employers may be forced to leave the defined pension system altogether, possibly reducing retirement security for workers. As everyone knows, the defined benefit system is a voluntary system. When companies first started offering defined benefit plans for workers it was an excellent benefit for workers and for their companies. However, now many companies are forced to give up offering defined benefit and the hybrid pension plans because of the legal uncertainty.

While I commend Chairman GRASSLEY and Chairman ENZI for working with their committees and reaching a compromise, I cannot help but point out that this issue is not completely addressed in S. 1783. My hope is that once this bill reaches the conference committee, hybrid pension plans will be a point of focus. I would be happy to work with my colleagues on this issue. It is important to Colorado, and important to many other companies nationwide.

Mr. REED. Mr. President, the Senate is undertaking a long awaited debate on the need to strengthen the private pension system. It is imperative that current and future retirees are assured that they will receive the pension benefits they have been promised so they are able to enjoy a secure retirement.

I am deeply concerned about the growing economic insecurity of today's workers. Despite recent economic growth, a healthy jobs recovery has yet to take hold, wages are failing to keep pace with inflation, income inequality is growing, employer-provided health insurance coverage is falling, and private pensions are in jeopardy. Indeed, strong productivity growth has translated into higher profits for businesses, but not more take home pay for average workers. The stagnation of earnings in the face of soaring prices for gasoline, home heating, food, and health care is squeezing the take home pay of workers.

Any wage gains we have seen seem to be concentrated at the top of the earnings distribution, while the largest losses are at the bottom. Over the past 4 years, average household income has fallen for all income groups except a small slice at the very top of the distribution. Those developments stand in sharp contrast to what happened in the 1990s, when wage and income gains were strong for all income and earnings groups.

At the same time that earnings are stagnating, the average worker's retirement prospects are more uncertain than ever. Twenty years ago, most workers with a pension plan could expect to receive a defined benefit based on years of service and salary. Today, defined contribution plans—which shift most of the investment risk and responsibility onto workers—have become the dominant form of pension coverage. As a result of this increased risk and responsibility, average workers may end up with inadequate retirement savings.

Despite the shift away from traditional pensions, defined benefit plans remain a critical source of retirement support, with 44 million workers and retirees relying on such plans as a source of stable retirement income. However, as we have seen by the recent pension terminations in the airline industry, the real risk of defined benefit plan defaults further exacerbates workers' uncertainty and concern about their retirement prospects.

The Pension Benefit Guarantee Corporation estimates that total underfunding in PBGC-insured pension plans is about $450 billion, more than $100 billion of which is in plans sponsored by financially weak companies and at reasonable risk of default.

And what of the status of PBGC itself, which serves as a backstop to the defined benefit pension system? At the end of 2005, the PBGC reported a cumulative deficit of $22.8 billion in its single-employer program. That figure is a slight improvement from a year earlier, when the shortfall was $23.3 billion which is the largest deficit in the program's 30-year history, and a sharp deterioration from only a few years ago when the single-employer program was in surplus. The deficit is expected to get worse in 2006, as PBGC will account for additional liabilities that it has taken over for the new fiscal year resulting from a number of major airlines and manufacturing companies who have defaulted on their pension obligations.

While the PBGC has sufficient assets to pay benefit obligations for a number of years, without changes in funding, the agency will eventually run out of money. The Congressional Budget Office estimates that PBGC's cumulative deficit will increase to $87 billion over the next 10 years, and suggests that there is a significant likelihood that all of PBGC's assets will be exhausted within the next 20 years.

The increased number of pension defaults means lost benefits for participants whose earned benefits exceed the statutory maximum benefit guarantee; premium increases for healthy plan sponsors remaining in the system; and ultimately the risk of a taxpayer bailout of the PBGC.

Clearly, the private pension funding system needs reform and the bill before us today, S. 1783, the Pension Security and Transparency Act of 2005, is movement in the right direction. I know that Chairman ENZI, Ranking Member KENNEDY, Chairman GRASSLEY, Ranking Member BAUCUS, and their staffs worked long hours to get to this point.

The bill tightens the funding rules to ensure that defined benefit plans are adequately funded. Limiting the use of credit balances to prevent companies with unfunded plans from avoiding plan contributions and requiring an accurate accounting of each plan's true financial condition are important steps.

But we must also avoid imposing unnecessarily burdensome funding requirements on plan sponsors that are playing by the rules. An asset valuation approach that doesn't allow for short-term fluctuations in the stock market will only exacerbate the inherent volatility in pension plan funding and increase funding burdens during economic downturns when companies can least afford them.

The bill also requires truth-in-funding disclosures for companies with underfunded pension plans so participants and other stakeholders can learn the true financial condition of their pension plans, as well as the potential loss of benefits if the plan terminates. This is an especially important safeguard for workers whose pension benefits exceed the PBGC's maximum benefit guarantee limit.

In order for the PBGC to remain a viable insurance program that continues to protect workers and retirees, its current funding gap must be closed. Recognizing this, the bill increases PBGC premiums to $30, while ensuring that companies whose plans pose the greatest insurance risk actually pay the additional premium for that risk.

S. 1783 would also prohibit companies from funding nonqualified plans under certain circumstances, including bankruptcy, significant underfunding of regular pension plans, or the termination of an underfunded regular pension plan. This is a positive development in addressing inequities of what has become a two-tiered pension system. Too often, the executives of those companies that default on their pension obligations escape with padded executive retirement packages while the average worker is left holding the bag. Companies that underfund or default on their regular pension obligations should be prohibited from funding and paying out benefits from special executive pension plans.

Finally, as new types of defined benefit plans evolve, we must ensure that older workers are protected and don't lose the benefits they have been promised.

The Pension Security and Transparency Act makes positive strides toward ensuring that workers will receive the full pension benefits they have earned. While the bill reflects difficult compromises, it is important that we act now to preserve the financial health of defined benefit pensions. I urge my colleagues to not stop here. We must continue work to improve our pensions system to ensure that Americans who work their entire lives have the financial security they deserve and worked so hard for when they retire.

Mr. GREGG. Mr. President, we must get serious as a Congress and a nation about across-the-board retirement reform. It is time every American worker has a sense of ownership over his or her retirement income and the promises that have been made.

To do so requires valid information about the security of his or her future retirement income, and current and relevant information to be able to make smart choices when options are available.

Beneficiaries must be timely notified when their retirement income is in jeopardy; workers must be assured that the law doesn't allow and even encourage hollow promises. Employers and union leaders should be prohibited from offering rank-and-file members benefit increases that cannot be paid for, particularly when a company is below investment grade.

The law must place a tangible price on all plan underfunding to limit the moral hazard of shifting risk to beneficiaries, the PBGC, and other companies paying premiums. Accounting schemes that paper-over massive funding shortfalls must be outlawed, and interest rate policies should be straightforward to administer and consistent with each plan's liability payout schedule.

Continuing the underlying 30-year-old pension law is not an option. It is a law without transparency where union bosses and irresponsible management are allowed to go into back rooms and make promises they know cannot be kept.

If we continue the status quo, we will move ever closer to the precipice of the slippery slope to a taxpayer bailout of the pension insurance system.

Those who make and then break their promises have now pushed us to the edge of a raid on the U.S. Treasury.

The Budget Committee held a hearing back in June where we heard testimony from the Congressional Budget Office, CBO, and the administration that confirmed the Nation is already in the midst of a retirement crisis. I am not speaking of the crisis in Social Security but of private pension plans and the program that insures benefits when sponsors default on their promises.

Since then, the CBO has prepared two additional reports analyzing the current state of health of defined benefit pension plans and the Pension Benefit Guaranty Corporation the Government insurance agency that insures them. Employer groups, think tanks, and the financial press have also widely reported on the poor health of America's single employer defined benefit pension system. The consensus is indisputable that we have a crisis on our hands on our watch if you will.

The PBGC already has a serious deficit and a cash crisis looming with a clock that will toll 20 or 30 years sooner than what we expect in the Social Security system. While many criticized the PBGC over the last year as being overly pessimistic in projecting a $23 billion deficit, we learned just yesterday with their year end reporting that not only was the PBGC surprisingly accurate—posting a deficit of $22.8 billion, if recent events that occurred right after the end of the fiscal year had been included, the deficit in the single-employer program would have been posted at $25.7 billion—a 10 percent increase.

Furthermore, because accounting standards require the PBGC to disclose additional information on the change in its net position, we learned that PBGC's exposure to losses from plans sponsored by weak employers has risen to $108 billion from $96 billion just a year ago—that is an increase of 13 percent in a year when sponsors would have had us believe things are not as bad as they seem.

Just last year, there were 120 defaults requiring the PBGC to assume responsibility for pension benefits of an additional 232,000 workers and retirees. In just 3 short years, the PBGC has taken on more workers' retirement responsibilities than the previous 27 years combined.

We are obviously in a crisis and something must be done. Unfortunately, the bill before us today is only a very modest and incomplete step toward addressing the issue.

With regard to the PBGC's health, modification to premium levels fall $1.7 billion short over 5 years from what was reported just last month by the HELP Committee in meeting its budget reconciliation instruction, comparatively lowering the level of resources available to the PBGC to take on the responsibilities of plan defaults.

With regard to the health of pension plans themselves, the administration has analyzed the funding rules in the bill and reports that its provisions do not improve the underlying funding requirements for plan sponsors over current law.

With regard to innovative retirement programs offered by employers, I continue to have serious reservations about the measure before us today and its failure to provide comprehensive clarification of the law applicable to cash balance and hybrid pension plans.

The Congress should be able to enact legislation stating unequivocally that providing interest on employees' pensions is an important benefit protection and is not and never has been age discriminatory, and that Federal law does not and never has required any type of pension plan to pay out lump sum benefits that are much larger for younger employees than for identically situated older employees.

At best, the bill half heartedly recognizes these principles only as to the future and then only subject to numerous qualifications and benefit mandates—apparently trying to dance around the concerns of some who would try to repeal laws of mathematics, specifically the effect of compound interest.

The failure to acknowledge the legitimate status of plans already in place leaves companies that provided generous pension benefits to their employees, many of them with favorable determination letters from the IRS, facing hundred of billions of dollars in potential liabilities and continues a legal landscape for frivolous lawsuits and attempts by the plaintiff bar to extract unreasonable settlement agreements.

The numerous qualifications and benefit mandates in the bill applying to hybrid plans are more likely to discourage employers from continuing innovative pension plans. Indeed, the only parties that clearly benefit from these provisions as currently drafted are trial lawyers who will gladly file frivolous lawsuits and extract settlement agreements with no basis in underlying Federal law.

On the plus, side, the bill does improve transparency and more-timely notification to participants regarding their retirement plan's health—a significant step in moving toward making more information public and allowing the marketplace to more reliably take into account funding decisions of plan sponsors.

Fortunately PBGC payments are generally not made on a lump sum basis unlike withdrawals on a savings & loan. Nevertheless, the pension insurance fund will first run short on cash in just under 5 years. It will take roughly another 15 years to liquidate its remaining assets to pay claims but then all its resources are gone.

If Congress allows shortcomings in current law to remain, more defined benefit pension plan terminations will happen, and millions of workers will receive only a fraction of the retirement they were promised.

Consider that in 1986 there were over 170,000 defined benefit pension plans. That number has dropped to roughly 56,000. Just since 1999, 7,500 defined benefit plans were terminated—a drop of 19 percent in just 3 years. Continuing a broken system and the uncertainty about promising opportunities to preserve creative defined benefit approaches to retirement plans such as cash balance plans will only increase this trend.

Specifically, absent stronger funding rules, clarifying the legitimacy of innovative plans, improved transparency and increased premiums, employers will have little incentive to restore faltering pension plans to financial stability, and the PBGC deficit will continue to grow, posing an ever greater risk that taxpayers will be asked to step in and bail out the private defined benefit system long before social security goes in the red.

To be very clear, we are very close to the slippery slope of no return from a default crisis of a magnitude that cannot be handled alone by premium increases on employers to shore up the PBGC.

I am disappointed that the measure we have before us today does not solve the defined benefit pension crisis and at best only postpones a political fight about the advisability of a taxpayer bailout of pension promises made by American companies to American workers. But we must move the legislative process forward.

If Congress doesn't act, the PBGC will need to charge even higher premiums for companies that remain in the system, significant economic losses affecting beneficiaries and investors will result, and pressure for a taxpayer bailout will be seen as a commonplace solution to the crisis, resulting in the likely demise of defined benefit pension plans altogether.

While I commend the chairman and ranking member for a significant amount of hard work and progress on these challenging issues, there are still important areas that I believe require a great deal of work. I strongly encourage the chairman to ensure that the shortcomings in this bill that I have identified today be corrected as it moves through the remainder of the legislative process.

An incomplete fix to these issues will have a devastating effect on companies, current workers, and retirees. I understand that this bill is a work in progress and my concerns will continue to be addressed as this legislation proceeds through the legislative process. For the retirement security of millions of American workers and taxpayers, I hope so.

Mr. KERRY. Mr. President, today we are debating the Pension Security and Transparency Act of 2005 which is the culmination of the efforts of the Finance Committee and Health, Education, Labor, and Pensions Committee to improve the funding of both single and multiemployer defined benefit plans. I commend Senators GRASSLEY, BAUCUS, ENZI, and KENNEDY for their efforts in reaching bipartisan compromise legislation. We all agree that defined benefit plans are underfunded and that this issue needs to be addressed.

At the end of fiscal year 2005, the Pension Benefit Guarantee Corporation had $22.8 billion in underfunding in its single employer program. The PBGC's liabilities for fiscal year 2006 are expected to be much higher. If other liabilities that the PBGC assumed after the end of the fiscal year were counted, the 2005 deficit would have been $25.7 billion.

We cannot allow the underfunding of pensions to continue. This legislation takes the right approach by striking the appropriate balance. We want to protect employees, but we do not want to make defined benefit plans so restrictive that employers will not offer them.

The focus of the Pension Security and Transparency Act is to improve the funding of pension plans and to provide more disclosure, but this legislation does address other important pension issues. The Senate Finance Committee has reported out pension legislation in past Congresses that was not addressed by the full Senate. The first reiteration of Senate Finance pension legislation focused on defined contribution issues that arose in light of the collapse of Enron. Along with Senator SNOWE, I introduced legislation which strengthened defined contribution plans by requiring diversification and disclosure. Many of the provisions from this bill were incorporated into the Finance bill.

Even though the collapse of Enron is behind us, the lessons learned remain. It is important for defined contribution plans to be required to allow workers to diversify their contributions out of employer stock. The rank and file employees of Enron do not want anyone else to have the same experience that they had. These provisions are overdue.

Other lessons can be learned from the Enron debacle. Back in 2001, we were all repulsed by the stories of corporate greed and how executives crafted elaborate schemes to falsify the true financial status of the companies. Enron reminded us about the problems with excessive executive compensation.

Unfortunately, excessive executive compensation remains an issue today. Due to the work of the Finance Committee on executive compensation an end has been put to some abusive practices, but some still remain. One in particular that I find troubling is the funding of nonqualified deferred executive compensation prior to the funding of the corporation's pension plan.

In recent years, a number of large companies set aside millions of dollars to fund the pensions of top executives, but they do not bother to fund their pension plans. Companies that chose to do this were not violating laws by doing so, but this legislation will change this. Under this legislation, for the first time the funding of nonqualified deferred executive compensation will be linked to the funding of pension plans.

Executives of financially weak companies will no longer be able to take care of themselves. We repeatedly hear about executives that negotiate deferred compensation to ensure that they have a lucrative nest egg, even if the company is struggling or about to go bankrupt. We cannot stand for this any longer.

This legislation includes a provision which I worked to have included in the Finance Committee bill. Financially weak companies will no longer be able to fund executive compensation unless their pension plan is 80 percent funded. Initially, the Finance Committee restricted the funding of deferred executive compensation for companies with plans that are funded at 60 percent or less. I thought 60 percent was too low because a plan is already in trouble at this point. In addition, no benefit increases will be allowed if a plan is funded at 80 percent or less. There is no valid reason why deferred executive compensation should be funded if a pension plan is funded at a level at which benefit increases are restricted.

Employers have a responsibility to fund pension plans. They should not make promises to their employees and fail to keep them, while they are taking care of their own retirement.

The bill before us today does the right thing by restricting the funding of deferred executive compensation for financially weak companies that have pension plans funded at 80 percent or less and for all companies that have pension plans funded at 60 percent or less.

In June, the PGBC released data on the underfunding of pension plans with more than $50 million in unfunded pension liabilities. This data shows that these plans have an average underfunded ratio of 69 percent. Back in 2000, the average funding ratio was 82.8 percent.

While pension funding has been on the decline, deferred executive compensation is increasing. We need to send a message to corporate executives that they need to fund the pension plans of their workers before they reward themselves with extremely generous benefits for life. I see this not as punitive, but as meeting our responsibility to demand better performance from the executives who can do the most to put pension funding on track. Ultimately, this proposal will protect the taxpayer.

The Pension Security and Transparency Act of 2005 includes provisions which make slight modifications to the funding rules for interstate bus companies. I worked to have these provisions included in the Finance Committee bill. These provisions address a unique situation in which the average age of the participant of the plan is much older than participants in other plans. Congress has addressed this issue before on a temporary basis and the provision in the chairman's modifications would make this relief permanent. It will help retirees in my home state of Massachusetts, and it is an equitable outcome.

Not only does this legislation address single employer plans, it strengthens multiemployer plans. The Pension Security and Transparency Act of 2005 includes important provisions which strengthen the funding rules for multiemployer pension plans. Multiemployer pension plans play a vital role in our pension system. Multiemployer pension plans are collectively bargained arrangements between a labor union and a group of employers in a particular trade or industry. These plans provide a way for workers in industries where job changes are frequent to save for retirement. Pension coverage continues when an employee changes jobs if the new employer is with a participating employer.

The Pension Security and Transparency Act would require troubled plans to improve their finance condition and severely underfunded pension plans would be required to adopt a ten-year rehabilitation plan. This legislation requires the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation to issue a study on the state of multiemployer funding in five years.

I proposed an amendment which was added to the bill. This provision requires the study to look at the effects that the new funding rules have on small employers and other issues that they face, including the impact of withdrawal liability. Employers that wish to discontinue their cosponsorship of a multi employer plan are required to pay a withdrawl liability, which represents the sponsors' pro rata share of the plan's underfunded liabilities.

Recently, I heard from a small business owner in Massachusetts who contributes to a multiemployer plan and he explained how his withdrawal liability has increased rapidly over the last five years. Some of this is due to corrections in the stock market, but part of it is due to a decrease in companies paying into plans. This small business described withdrawal liability as a ''vicious death spiral''—as more companies go out of business or otherwise withdraw from the pension fund, withdrawal for the remaining employers rise.

This provision would require the impact of withdrawal liability on the financial status of small employers to be studied. In addition, the study would look at the role of the multi employer pension plan system in helping small employers to offer pension benefits.

The multiemployer pension system serves an important role in our pension system and we do not want to make these plans a burden for small businesses. If withdrawal liability continues its vicious spiral, it will be difficult for multi employer plans to attract new employers and existing employers could be faced with a situation in which their withdrawal liability exceeds their assets.

In addition, the Pension Security and Transparency Act would incorporate provisions from the Save More for Retirement Act of 2005 which I have cosponsored. These provisions will encourage workers to participate in retirement plans by providing innovative incentives for employers to modify their existing plans to add provisions that will increase savings. Employers will be able to automatically enroll their employees in 401(k)s upon being hired unless the employee notifies the employer that he or she does not want to participate. Studies have shown that this simple change will dramatically increase participation rates. This is a simple improvement that should increase our drastically low national savings rate.

We might not all agree with every single provision in this bill, but overall it reflects a balanced approach to a problem that needs to be addressed. Plans need to be adequately funded. The rules cannot be draconian and lead to the termination of pension plans by employers.

Pensions are a central part of our retirement system and we need to ensure continued participation by employers. Retirement is based on three components: personal savings, employer provided pensions, and Social Security. All three components are necessary for a sound retirement system that is able to provide for most of America's retired workers.

Our current pension laws are inadequate. Employers have not properly funded their pension plans, workers have been promised more than their pension plans can possibly 3 deliver, and the PBGC can not be expected to cover the difference. At the same time, the financial burden of employer-provided pensions is real, and it threatens some of our major companies and the jobs they provide today.

This issue is not going away. The PBGC estimates that its shortfall could approach $100 billion dollars based on the underfunding of plans which have been classified as reasonably possible of termination.

We should avoid a subsidy or bailout with general revenues. The PBGC operates with no taxpayer assistance today and it was designed to be financially independent of the Federal Government. We should maintain that.

Passing the Pension Security and Transparency Act of 2005 is a step in the right direction to preserving our defined benefit pension system.

Mr. ROBERTS. Mr. President, I commend my colleagues on both sides of the aisle for crafting this comprehensive pension reform measure to strengthen the defined benefit pension system and ensure the solvency of the Pension Benefit Guaranty Corporation.

One provision that I am pleased we were able to find bipartisan agreement on and include in S. 1783 is language that recognizes the special nature of multiple-employer defined benefit plans. These multiple-employer plans are sponsored by rural electric, rural telephone, and agriculture-related cooperatives. Nationwide, more than 1,700 cooperatives participate in a multiple-employer plan, providing benefits for over 109,000 workers and retirees. In

Kansas, more than 160 cooperatives will benefit from the multiple-employer provisions in this bill.

These cooperatives are not-for-profit, and provide at-cost services to their consumer owners. Multiple-employer defined benefit plans allow cooperatives to pool experience and expenses by maintaining a single plan as opposed to single-employer defined benefit plans that cover just one company's employees.

For companies that sponsor a single-employer plan, if that company goes out of business, the pension plan terminates, and if underfunded, creates risk to the PBGC. Multiple-employer cooperative plans are different because the pension plan continues to operate even if some cooperatives go out of business. Most importantly, no liabilities shift to the PBGC. These cooperative plans are ongoing plans that can outlive many of their participating employers, and are treated as such under this bill.

The Health, Education, Labor and Pensions Committee, of which I am a member, and the Finance Committee, both recognized the special nature of multiple-employer plans, and their lack of risk to the PBGC, in their respective pension bills. During consideration of the HELP Committee's pension bill, the Defined Benefit Security Act, an amendment I offered to clarify the treatment of multiple-employer cooperatives was approved by unanimous consent. The Finance Committee adopted a different approach to recognize the unique nature of multiple-employer plans.

As the committees worked to bring a bill to the Senate floor, I, along with several of my colleagues, shared our concerns about the need to include multiple-employer cooperative language in a final bill in a letter to the chairmen and ranking members of the HELP and Finance Committees.

While different from the provisions of both the HELP and Finance Committee bills, the multiple-employer provisions in S. 1783 achieve their goal. S. 1783 provides a 10-year delayed effective date for these rural cooperative plans, continues to exempt these plans from the bill's at-risk rules, and provides special funding and premium rules during this 10-year period. With regard to funding, these plans will use the four year weighted average of the third segment rate of the corporate bond yield curve created in this bill. For purposes of the premium rules, these plans will use a spot version of the third segment rate.

Mr. President, I urge the inclusion of the multiple-employer rural cooperative provisions contained in S. 1783 when a final pension reform bill is sent to the President for his signature. These provisions have bipartisan support, recognize the special nature of rural cooperatives, and provide an important benefit for over 109,000 employees and retirees across the country.

I ask unanimous consent to print the letter to which I referred in the RECORD.

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

U.S. SENATE,
Washington, DC, September 23, 2005.

Hon. MICHAEL B. ENZI, Chairman,
Hon. EDWARD M. KENNEDY, Ranking Member,
Committee on Health, Education, Labor, and Pensions, Russell Senate Office Building, Washington, DC.
Hon. CHARLES GRASSLEY, Chairman,
Hon. MAX BAUCUS, Ranking Member,
Committee on Finance, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN ENZI, CHAIRMAN GRASSLEY, SENATOR KENNEDY AND SENATOR BAUCUS: We write to urge you to continue recognizing the special nature of rural cooperative ''multiple-employer'' defined benefit plans sponsored by the National Rural Electric Cooperative Association, the National Telecommunications Cooperative Association and the United Benefits Group (agriculture-related cooperatives), as you work toward an agreement on comprehensive pension reform. By design, these rural cooperative plans are different because they would continue to operate even if some cooperatives go out of business. Most importantly, no liabilities shift to the Pension Benefit Guarantee Corporation (PBGC).

Both the Health, Education, Labor and Pensions Committee and the Finance Committee have recognized the special nature of ''multiple-employer'' defined benefit plans of these rural cooperatives. We believe that any bill sent to the floor for consideration should include both Committees' provisions.

These rural cooperatives are not-for-profit, and provide at-cost services to their consumer-owners. Their defined-benefit plans permit them to pool experience and expenses by maintaining a single plan for hundreds of employers, as opposed to single-employer plans that cover only one company's employees. We have concerns that unless these specific cooperative provisions are included, these entities may be forced to either reduce benefits to their employees or pass along substantially increased costs to their member-owners.

For companies that sponsor a single-employer plan, if that company goes out of business, the pension plan terminates, and if underfunded, creates risk to the PBGC. Again, these rural cooperative plans are different because the pension plan continues to operate even if some were to go out of business, and no liabilities shift to the PBGC. In fact, none of the liabilities of these rural cooperative ''multiple-employer'' plans have ever been shifted to the PBGC.

These rural cooperative plans are ongoing plans that can outlive many of their participating employers, and they should be treated as such under any bill that goes to the floor. Again, we urge you to include both Committees' provisions in any bill sent to the floor to recognize the special nature of rural cooperative plans, their ongoing nature, and their lack of risk to the PBGC.

Thank you for your consideration of this request.

Sincerely,

Pat Roberts, Lamar Alexander, Johnny Isakson, Gordon Smith, Craig Thomas, Tom Harkin, Jeff Bingaman, Ron Wyden, Tim Johnson, John Thune.

Mr. LEVIN. Mr. President, the issues addressed in this pension bill are complex. We are treading into a swamp of technical terms and complicated plans. But the core issues are simple matters of fairness. Will retirees receive the benefits they were promised? And will the companies who are trying to do right by their workers be encouraged rather than unfairly penalized?

About half of all private sector workers participate in one of two general types of employer-sponsored retirement plans: a defined-contribution plan or a defined-benefit plan.

Defined-contribution plans, such as a 401(k) plan, are much like individual savings accounts into which employers and employees contribute. These funds are then usually invested into stocks and bonds with the hope that the investment will grow as the worker approaches retirement. When the worker does retire, the balance of the account is available for him or her to withdraw.

Defined-benefit pensions, by contrast, guarantee an employee a certain amount of retirement benefits, typically based on years of service and salary level. To pay these promised benefits, the employer sets aside money in a combined pension fund, which is then invested. The employer decides how that fund is invested and retains control over the funds until dispersed to the retirees.

It is this second category, defined-benefit pensions, that are facing a crisis today. Due to swings in the stock market, complex funding rules, changes in the business climate, or unforeseen developments, companies' defined-benefit pension plans are underfunded. Some companies have declared bankruptcy to get out of their pension obligations, and there is reason to worry that this disturbing trend will continue.

When a company sloughs off its pension obligations in bankruptcy, the Federal pension insurance agency, the Pension Benefit Guaranty Corporation PBGC, steps in to ensure retirees receive benefits, up to a maximum of about $46,000 per year for employees who retire at age 65. The PBGC is self-funded through insurance premiums and fees paid by companies with defined-benefit plans. With the PBGC taking on more companies' pension obligations, however, there is less money coming into the PBGC and more money going out. The PBGC announced just yesterday that it is running a deficit of $22.8 billion.

Ultimately, if the long-term health of the PBGC continues to decline, many people are concerned that only a taxpayer-financed bailout would allow retirees to receive the benefits they were promised.

We need to strengthen the defined-benefit system so that that does not happen. We must encourage the recovery, rather than the termination, of underfunded and vulnerable pension plans. If we can shore up these plans without doing undue harm to the companies, the concerns about PBGC's fiscal problems will be addressed.

To do so, companies should be required to adequately back up the promises they have made to their workers. And changes in Federal pension policy should help them. For example, we need to reduce uncertainties for employers making a good faith effort to meet their obligations. We also need to ensure that we do not give incentives to employers who offer hybrid pension plans to either jettison their retirement plans entirely or offer only defined-contribution plans.

In this way, I believe it is possible to improve retirement security while also reducing the long-term exposure of the PBGC.

However, I have serious concerns that the bill before us today will do some significant harm in the effort to do positive things.

One provision of particular concern would require the pension plans of companies with plans that are less than 93 percent funded who also have declining credit ratings to be considered ''at-risk.'' Once considered ''at-risk,'' companies must use different actuarial assumptions that require them to sock away significantly more money into their pension trusts. That provision alone could require companies to put unnecessarily high amounts of additional dollars into their pension plans. These are dollars that could otherwise be used to boost research and development or doing other activities that could create jobs.

Another provision of concern deals with an actuarial method known as ''smoothing.'' Under current law, how much money companies have to put into their plans is determined by using a 4-year weighted average of the values of pension assets and/or liabilities. It is generally recognized that 4-year smoothing has led plans to become underfunded by masking the diminished current fair market value of a plan's assets.

The original bill from the Health, Education, Labor, and Pensions Committee would have shortened smoothing to 3 years. The House Ways and Means Committee and House Education and Workforce Committee bills also allow 3 years. The HELP/Finance Committee compromise, however, takes a 12-month average. Three years is a fair approach that would tighten current law but still allow some necessary cushion against volatility for employers; twelve months would significantly increase the volatility and unpredictability for employers. This shorter time frame would unwisely add significant volatility for companies when they are determining how much money they need to set aside for the pension plans.

For months, Senators MIKULSKI and DEWINE have been urging an amendment that would have addressed these two problems. The amendment they wanted to offer, which I co-sponsored, would have adopted the HELP Committee's 3-year position on smoothing. Their amendment also would have replaced the use of credit ratings in determining whether a company has to abide by ''at-risk'' funding requirements and would instead measure ''at-risk'' by how well-funded the pension plan is.

I am disappointed that we were not able to vote on the DeWine-Mikulski amendment. I am hopeful, however, that these problems with the Senate bill will be adequately addressed in conference. I hope the conferees will come back with what the House committees adopted on those issues.

I am also concerned about the overall effect that the bill will have on the defined-benefit plan system. Some of the actuarial changes that may be appropriate on their own may become problematic when packaged together. The changes required by this bill would require companies to fund their long-term pension obligations somewhat too quickly, and would make the amounts of their required contributions fluctuate unpredictably. The short-term financial impact might push companies with underfunded plans to terminate the plans, rather than working to bring their funding levels up. A survey of chief investment officers for large pension plans found that 60 percent thought significant and rapid changes, such as those in the House or Senate bills, would lead to benefit reductions or plan termination.

I also hope that in the final conference report the Senate's position on credit balances prevails over the unwise House provision. The House bill would penalize companies that prefunded their plans, by making additional, non-required contributions, to subtract these prefunded amounts from the calculations of their plans' assets. This change would trigger unfair financial penalties for the companies and would deter future prefunding, which we should encourage, not discourage.

On a positive note, I am pleased that this bill will give airlines extra time to fund their plans. In the wake of Northwest and Delta airlines declaring bankruptcy, Congress must help companies do the right thing and keep their plans when they emerge from bankruptcy, rather than turning their obligations over to the PBGC.

Also, I am pleased that Senator STABENOW's work to address problems with the multiemployer pension plan system is reflected in this bill. These multiemployer plans provide millions of employees of small firms with the opportunity to be covered by a defined benefit plan.

Finally, I am pleased that this bill protects older workers in cash balance plan conversions, and that it gives guidance regarding some of the uncertainties surrounding hybrid plans. Legal questions surrounding hybrids like cash balance and pension equity plans should not stand in the way of companies offering the best pension plans that they can.

Pension reform is a critical issue for Michigan. Michigan's manufacturing workers have always planned for the future by forgoing some short-term wages in order to provide for themselves and their families when they are no longer working. Likewise, those in other industries, including employees of Northwest Airlines, also rely on defined-benefit pension plans.

The retirement security of Michigan workers and workers across the country would be significantly weakened if we drive guaranteed benefit pension plans out of business, and that is what I am concerned that this bill could do. I will vote no on this bill, because on balance it does not ensure that companies striving to do the right thing are not unfairly penalized and because workers in those companies must also receive the retirement benefits they were promised. I truly hope the final bill reported by the conference committee will repair the defects I have identified.

Mr. ENZI. Mr. President, the calculation of lump sum distributions has been hotly debated. Some have been worried that the bill would short-change participants in their lump-sum distributions. That is not the case. In fact, this bill has been very careful to avoid the problems that occurred after the enactment of the pension reforms on the GATT in 1994.

Under S. 1783, it is intended that plans may use different assumptions—that is, interest rates and or mortality tables—to determine lump sum distribution amounts so long as the plan provides that a participant's lump sum distribution amount is no less than the present value determined in accordance with the requirements of the bill.

Mr. BURR. Mr. President, I rise today to speak on the pension reform legislation we have been working on for months. Many have said that the policy goal of any major reform to the current pension system is to ensure that the defined benefit system remains a viable option for companies and that employers keep the retirement promises they have made to their employees. In these discussions, one often hears about the proposed new rules and mandates concerning funding rules or asset and liability valuations. Given that the pension statute has not received a major overhaul since the 1970s, new rules are certainly necessary to ensure that past and present employees and the American taxpayer are protected from financial loss.

Nevertheless, what is often left unsaid in our discussions is the fact that the defined benefit system is a voluntary, not a mandatory, system. While rules and mandates exist for companies that choose to participate in the defined benefit system, no such rules or mandates exist requiring companies to participate. Thus, if strengthening the defined benefit system is the basic premise behind this proposed legislation, it is critical that we ask ourselves if the proposed rules and mandates might have the unintended consequence of driving companies out of the voluntary defined benefit system once and for all.

Alternatives to the voluntary defined benefit system do exist. For many companies and employees, they are good alternatives, such as the defined contribution system and its 401(k)s. However, the personal savings rate of

Americans remains one of the lowest among the industrialized nations, and the average balances in 401(k) accounts are quite modest. There is no question that without defined benefit plans, fewer Americans would be able to retire comfortably. Further, the disappearance of defined benefit plans, including hybrid defined benefit plans, could very well result in increased pressure on Federal entitlement and income maintenance programs, not to mention an increase in old-age poverty.

Given these troubling facts, the value of defined benefit plans to many American families is clear. Sadly, we have seen a decline in defined benefit plan sponsorship, and these are perilous times for the defined benefit system. Employers are leaving the system for many reasons. Among these are uncertainty about how future pension liabilities will be measured, new pension funding rules that are complicated and unpredictable, the worry over new and more onerous pension funding and premium requirements, upcoming changes to the pension accounting rules, and, of course, legal questions regarding hybrid pension plans.

I appreciate the efforts of my Senate colleagues to craft meaningful defined benefit pension reform legislation. The proposed legislation, however, will have the unintended consequence of driving away company after company from the defined benefit system and further exacerbate the looming deficit of the Pension Benefit Guarantee Corporation, PBGC, thereby passing an unnecessary financial risk on to the American taxpayer. Rather than strengthening the defined benefit system, this proposed legislation contains elements that could negatively affect the retirement security of the current 44 million participants in defined benefit plans. Further, workers coming behind them are at risk if the legislation is not done in a way that encourages plan sponsors to stay in the voluntary defined benefit plan system. I wish to highlight a few of the provisions contained in the proposed legislation I believe will lead employers to opt out of the voluntary defined benefit system.

To plan business investment and operations, employers must be able to anticipate required pension contributions several years into the future. Required contributions cannot be too volatile; otherwise, they will be too difficult to accommodate in cash flow operations of the business. To determine the amount of money an employer must contribute to its pension plan, assets in the plan are compared to the liabilities of the plan. Under the bill, plans would determine the amount of their funding liability using an interest rate averaged over only a 12-month period and asset values also averaged over just a 12-month period. This will make it very difficult for businesses to plan and will force them to set aside assets in the event they are needed for liabilities due to spikes in interest rates. The alternative is to force companies to shift assets out of the equity markets and into fixed income markets which could hike costs and discourage plan sponsorship. This is bad policy.

The proposed legislation also sets a new target liability—100 percent of liabilities promised under the plan. This is a significant increase from the current law target—90 percent. If companies must meet this new target too quickly, sharp upticks in contributions may be required for many companies that are currently considered well-funded. Because the new interest rates will adjust liabilities for some companies, companies that are currently at their maximum funding level could be facing very large contributions. Since obligations are due over a very long period in many instances, these contributions will be unnecessary. Pensions could be frozen, other benefits could be frozen, costs of goods and services could increase, and jobs could be lost as a result. The 3-year phase-in of the new target is insufficient to avoid harmful consequences to American workers and the economy.

Another very troubling provision of the proposed legislation relates to credit ratings. A company's credit rating, determined by private ratings agencies and not the Federal Government, should not determine a pension plan's liability. The credit rating of a company does not determine the funded status of a plan. A company can have a below investment grade credit rating and pose absolutely no risk to the PBGC. It serves no policy goal to impose new liabilities on a company because it is financially weak. That will simply make it more difficult for a company to recover, leading to potentially lower credit ratings, and could result in death-spirals and plan terminations that the legislation seeks to avoid. Furthermore, the credit rating provision would introduce a whole new concept—credit rating of private companies by the Government. If an at-risk liability is to be imposed, it should be based solely on the funded status of the plan.

A final concern I wish to raise relates to one of the most urgent crises in retirement security—clarifying the outstanding issues regarding hybrid pension plans. Hybrid defined benefit pension plans such as cash balance and pension equity plans were developed to meet the needs of our highly mobile workforce by combining the features of both traditional defined benefit plans and defined contribution plans, such as 401(k) and other individual account plans. Traditional defined benefit plans are most effective for employees with long careers with only one employer. Yet, according to the Bureau of Labor Statistics, very few employees are spending a full career with just one company. Today's workers need a pension benefit that is portable and that will produce meaningful benefits, even if they don't stay with one employer for their entire career. In light of these facts, nearly 30 percent of the Nation's largest companies with defined benefit plans have moved to a cash balance or other hybrid plan design. As of 2003, the PBGC reported that there are estimated to be between 1,200 and 1,500 of these plans providing benefits to around 8 million Americans and their families.

Employees know that cash balance and other hybrid plans contain many of the positive features of traditional defined benefit plans such as the safety of an employer-funded, PBGC-insured benefit where the company bears the risk of the investment, while at the same time providing defined contribution plan features such as individual account balances, portability, and a more even benefit accrual pattern. Many people who criticize hybrid plans do not realize that they are defined benefit plans, and as such, they provide a tremendous benefit to Americans, helping them achieve better retirement security.

Hybrid plans also provide greater benefits than traditional pensions for the majority of employees. This is because hybrid plans accrue benefits ratably, rather than toward the end of a long career, which is typical in a traditional pension plan design. For the minority of workers for whom a conversion from a traditional defined benefit plan to a hybrid plan design may result in future benefits that could be less generous than under the old plan, employers have employed a variety of transition assistance techniques to boost their benefit formulas. And of course, benefits earned by employees for service they have already put in are fully protected under the law.

Despite the value that hybrid plans provide to workers, current legal risks threaten their continued existence. One court case has placed all hybrid pension plans, both cash balance and pension equity plans, into doubt. Three other courts have found to the contrary, that hybrid pension plans do not violate the age act and are permissible under law. Yet it is this one single decision on which opponents of the hybrid pension plan hang their arguments. To preserve the retirement security of millions of Americans, it is essential that Congress comprehensively clarify for existing and future plans that the design of hybrid plans is not age discriminatory.

In *Cooper* v. *IBM*—274 F. Supp. 2d 1010, S.D. Ill. 2003—a District Court judge held, in the face of legal authority to the contrary, that cash balance and pension equity plans are age discriminatory. This decision was based on the fact that younger workers have more time to earn compound interest on their pension benefit than older workers. Compound interest is a feature of all defined contribution plans and of all savings plans. The logic behind declaring compound interest age discriminatory in defined benefit plans is seriously faulty and would nullify many longstanding defined benefit pension plan designs, including contributory defined benefit plans common in the Federal, State, and local government sectors.

As a result of the Cooper decision, every hybrid pension plan sponsor today finds itself in potential financial and legal jeopardy. It is a pity that we have come to this state. I say this because policymakers should be working to create an environment that promotes hybrid plans—not subjects them to greater risk. I had hoped that Congress would have responded to the Cooper case by providing legislative certainty and clarity for hybrid pension plans, both retrospectively and prospectively, to prevent widespread abandonment of these programs by employers.

I do not want my colleagues to think that I have not heard the critics of hybrid plans. I have. However, I believe that the majority of the criticisms of the plans are unfair. Let me review some of these criticisms and rebut them.

Some critics of hybrid plans have claimed that the plans are discriminatory on the basis of age. It is true that there has been one single court case that found that compound interest is age discriminatory in the hybrid plan context. As I said, three other courts have found to the contrary, yet critics give credence to this odd case. Hybrid plans provide the same or greater wage and interest credits for older participants than for young participants. Because older workers under these plans are treated the same as or better than similarly situated younger workers, the plans cannot possibly be in violation of the Age Discrimination in Employment Act, ADEA.

Others have criticized the ''wear away'' or benefit plateau that occurs in some hybrid plans. This has generated numerous questions and concerns through the congressional review of the hybrid plan issue. It is important to understand that parallel rules in ERISA and the Internal Revenue Code protect all benefits that an employee has already earned for service, to date. Thus, despite assertions to the contrary, existing benefits are not reduced in a hybrid conversion. ''Wear away'' is the term used for the benefit plateau effect that some employees can experience in conjunction with a cash balance conversion.

Still others criticize hybrid plan conversions because they frequently eliminate an early retirement subsidy, although they do so only prospectively. Some have complained about allowing employers to eliminate any benefits in their retirement plans. My own feeling is that employers must be able to maintain their flexibility to eliminate early retirement subsidies, but only on a prospective basis, as is the case under current law.

Early retirement subsidies are a better alternative to layoffs in many workplaces and they can help a company to manage its workforce. On the other hand, if an employer's right to eliminate early retirement subsidies on a prospective basis is not protected, no employer would ever adopt such an early retirement program in the first place. It makes no sense for employers to encourage highly productive workers to take retirement in their fifties by paying a premium for them to leave the workforce. While current law protects any subsidy that employees have already earned for their service to date, it allows employers to remove those incentives from their plans going forward.

The conclusion that all hybrid plan designs are inherently age discriminatory also raises the question why the Internal Revenue Service, IRS, issued determination letters for many years specifically permitting the hybrid designs and why it issued proposed regulations providing that the cash balance plan design is not inherently age discriminatory. The Cooper decision completely ignored this regulatory history. Of even more interest is that the Cooper decision disregarded the legislative history of the pension age discrimination laws adopted in 1986. That conference report made it clear that intent of Congress was limited to prohibiting the practice of ceasing pension accruals once participants reached normal retirement age, i.e. the so-called post-65 pension accrual.

The Cooper decision emboldened cash balance critics to demand an appropriations rider that prohibited the Treasury Department from finalizing its age regulations addressing hybrid plan designs and conversions. At that time, Congress directed the Treasury Department to publish a legislative proposal regarding conversions from traditional to cash balance plans. In the legislative history, the conference report did state that ''[t]he purpose of this prohibition is not to call into question the validity of hybrid plan designs (cash balance and pension equity). The purpose of the prohibition is to preserve the status quo with respect to conversions through the entirety of fiscal year 2004 while the applicable committees of jurisdiction review the Treasury Department's legislative proposals.''

While the Cooper case is a rogue decision, there is significant authority to the contrary concluding that hybrid plans are age-appropriate. Unfortunately, the Cooper case has led to what are called copycat lawsuits both in the Southern District of Illinois and elsewhere in the Nation. The Cooper case has also had a chilling effect on the plan sponsor community. Concerns over potential damages from these cases are causing CEOs and CFOs to have very sober discussions regarding the future of their plans. There seems to be a slow, but steady, domino effect of freezing hybrid pension plans as a result of concerns over potential liability from fallout of the Cooper case. This is occurring despite a general belief that the Cooper case could be overturned on appeal. I fear that if Congress fails to bless the hybrid pension plan design in short order, these voluntary plans could all become frozen.

If we can conclude that the design of these plans is consistent with the ADEA, but the conversions to hybrid plans raise questions, why can't we legislate in this area to simply bless the hybrid plan design? Clarifying only the legality of prospective plans does not address any of these problems; it does nothing to eliminate the potential for devastating suits directed at the prior operation of hybrid plans. Retroactive legislation is needed because the consequences of inaction or prospective-only legislation could be disastrous. If retroactive legislation is not adopted and the Cooper case is decided adversely on appeal, the liabilities of hybrid plans would triple if companies are forced to pay the enormous windfalls created under Cooper. This would impose such enormous costs on employers that large numbers of them would have no choice but to eliminate future benefits in their defined benefit plans. Many companies will not be able to absorb those additional liabilities, causing business declines and bankruptcies, as well as widespread damage to the economy.

Many have ignored the taxpayer interest in the outcome of retroactivity legislation. As we contemplate the precarious state of the PBGC, it is important to consider the potential impact of failing to provide retroactive relief on that troubled agency's solvency. Conservative estimates of the national liability attributable to the Cooper theory of age discrimination are well in excess of $100 billion. Many employers would undoubtedly be forced into distress plan terminations by this liability, shifting the liability to the PBGC. Other employers would simply terminate their plans, resulting in a precipitous contraction of the PBGC's premium base. The PBGC reports that for 2004, 24.6 percent of the participants in covered single employer plans are in hybrid plans; this means that such plans generate almost a quarter of the single-employer flat-rate premiums. Both developments would make a taxpayer bailout of PBGC far more likely.

I must also raise an additional issue regarding the hybrid pension plan provisions of the bill before us. As you know, it is the cash balance pension design that has been at the center of the congressional discussion about the need to provide legislative clarity for hybrid plans. Yet, another leading variety of hybrid plan, called the pension equity plan, is in equal need of congressional attention. In a pension equity plan, employers provide credits for each year of employee service and these credits are multiplied by an employee's final pay to produce a lump sum figure. Typically, the benefit credits given to employees increase with age and/or years of service, making this design an attractive one for older and long-service workers. Dozens of large employers around the country offer pension equity plans, including a number of very large employers in my state.

Pension equity plan sponsors and participants face the same risks and are in need of the same legislative clarification as cash balance plans—that their basic design is not, in fact, illegal and does, in fact, satisfy our age discrimination rules. To achieve this objective, the legislative provision clarifying the age discrimination rules for hybrid plans must specifically reference pension equity plans in the statutory language. The legislation before us does not do this. Rather, it leaves the issue of whether pension equity plans receive the same beneficial clarification as cash balance plans up to the Treasury Department in later administrative guidance. This will simply prolong the legal uncertainty that is driving many employers to consider ending their pension equity plans altogether. I believe this must be remedied—that we must give pension equity plans the same explicit statutory treatment as cash balance plans. I hope that, along with applying the clarification of the hybrid designs to existing plans under current law, we can explicitly address pension equity plans as we move toward conference on this pension bill.

I likewise hope that we can make several other refinements to the bill's hybrid provisions so that these provisions more appropriately address some of the unique issues surrounding pension equity plans. For example, the bill currently has a requirement that hybrid plans pay certain minimum interest rates. Yet, unlike in cash balance plans, the benefits in pension equity plans grow with pay increases, as traditional defined benefit plans do, rather than with interest, so this requirement really does not make sense in the pension equity context. In addition, conversions to pension equity plans are typically handled differently than conversions to cash balance plans, and this needs to be acknowledged in the legislation. Finally, just as there are unique differences between cash-balance and pension equity hybrid plans that we must acknowledge, we must also recognize and support unique differences among cash-balance and pension equity plans respectively. No two plans are identical, nor should they be. Congress should not be so overly prescriptive in the rules for hybrid pension plans that it prohibits sponsors from adding unique features that may better serve their employees in retirement. I hope that during the conference on this bill, for example, we can recognize that there are cash balance plans that have returns based on equity indices. Such plans may provide returns that do not fall within the interest rate corridor established in this bill because their returns may be greater or lesser than required under this bill for the plan to be considered a qualified cash balance plan. While I do believe it is good policy for these plans to have a principal protection feature, to ensure workers are guaranteed upon retirement to receive the investment credits they have earned, I also believe that we should not discourage plans which provide participants the opportunity to receive higher returns that are attainable through the equity markets.

I would like to finish my statement by thanking the chairmen and ranking members for their work on the prospective hybrid language. While the bill does not address existing plans, serious discussions have begun to do so. It is imperative that these discussions continue so that we can clarify the validity of the hybrid pension designs, both cash-balance and pension equity, under current law.

Hybrid defined benefit plans play an invaluable role in delivering retirement security to millions of Americans and their families. To prevent total abandonment of hybrid plans by employers and the resulting harm to employees, I hope Congress will quickly provide legislative certainty and clarity for existing cash balance and other hybrid pension plans such as pension equity plans. Waiting for the Cooper case to be resolved on appeal is not the answer; as time goes by, more companies are reacting to the current uncertainty and potential liability by freezing or terminating their plans. At the same time, more and more companies are being dragged into copycat litigation. The losers in this terrible failure to act are my constituents in North Carolina and workers across America who will lose the opportunity to be covered by an employer-provided pension plan. Failure to resolve the status of hybrid defined benefit plans comprehensively is a betrayal of employers who are trying to do the right thing by their employees and the millions of workers who are counting on a pension for their retirement.

Mr. LIEBERMAN. Mr. President, I rise to express my support for S. 1783, the Pension Security and Transparency Act. This bill will make much needed reforms to our pension security system. It takes important steps to address the deteriorating financial condition of the Pension Benefit Guarantee Corporation, PBGC, to ultimately protect the defined benefit plans of millions of American workers. My purpose in coming to the floor today is to make note of a number of provisions in this bill that I believe are particularly important to our system of retirement security, and I am pleased that this bill incorporates these provisions.

First, the bill includes measures to encourage companies to implement so-called auto-enroll 401(k) plans. In plain English, this will accomplish a relatively simple, but tremendously effective change to ensure that more Americans are saving for their retirement. Currently, under most retirement plans, employees must take affirmative steps to join a company's 401(k) plan. Under an automatic enrollment system, new employees would automatically be included in an employer's 401(k) plan, and would have to take affirmative steps to withdraw from the plan. In essence, the choice of whether to participate in a retirement plan is still entirely with the worker, however, the default would be participation in the plan: workers could ''opt out'', rather than having to ''opt in'' to be covered.

Many studies have indicated that automatic enrollment is remarkably effective in raising participation rates among eligible workers, particularly for lower income workers. One study, for example, found that automatic enrollment increased participation from 13 percent to 80 percent for workers making under $20,000 a year. The fact is that without automatic enrollment, many workers don't take advantage of the savings opportunities available through 401(k)s. Sometimes it is because of inertia, or because of the more immediate demands of work and family, or because the options appear intimidating and confusing. The automatic 401(k) is a relatively simple concept that has the power to enhance retirement savings for millions of American workers. Earlier this year, I joined Senator BINGAMAN in introducing S. 875, the Save More for Retirement Act, to encourage such auto-enrollment plans. Our bill also included provisions to encourage plans to add a feature whereby employees' contributions would automatically increase each year until certain thresholds were met. We sought to address the concern that many who do participate in company plans don't take full advantage of the savings opportunities and therefore may be ill-prepared for retirement. I am pleased that the bill before us includes both the automatic enrollment and automatic increase provisions.

I am also pleased that the bill includes a number of provisions often referred to as the ''post-Enron'' measures. We on the Governmental Affairs Committee heard devastating testimony of how thousands of Enron workers saw their retirements savings plummet over the course of weeks. The bill today seeks to address these concerns by ensuring that workers do not have all their eggs in one basket. It encourages diversification of pension investments from employer stock. It also calls for workers and retirees to get regular statements showing the market value of pension investments. In addition, it encourages employers to provide workers with access to unbiased investment advice as to how to invest their pension retirement accounts.

There are many much needed reforms in this bill to ensure that defined benefit plans are adequately funded and that the PBGC remains solvent. It is not perfect, but it represents an effective compromise on a complex matter. I anticipate that additional modifications will be made in conference. I rise here today, however, to make note of these particular provisions that I believe will encourage and protect retirement savings for millions of Americans.

Mr. BOND. Mr. President, thank you for giving me the opportunity to speak on the floor today. First, I thank Chairmen GRASSLEY and ENZI and Ranking Members BAUCUS and KENNEDY in crafting this important legislation. The pension issues we take up today are notoriously complex and could have a significant financial impact on both American families and American businesses. The leaders of the committees have done an impressive job in bringing us to this point, and I congratulate them on their efforts.

One of the issues we address in this legislation is the validity of the so-called hybrid plans. Hybrid plans whether cash balance or pension equity—are a modern form of defined benefit plan that combines the best features of defined contribution plans, such as 401(k)s, with the best features of traditional defined benefit programs. Hybrid plans keep defined benefit plans relevant for workers in our contemporary, mobile economy. Indeed, these hybrid plans have been popular with both employers and employees, and today an estimated 8.5 million workers are earning secure retirement benefits through these plans.

For the past several years, these hybrid plans have been called into question. These turn of events came about when one of our Federal district court judges determined in the infamous Cooper v. IBM decision that the hybrid plan designs are illegal because they pay compound interest. Somehow, this judge believes that it is age discriminatory for employers to pay interest on their employees' pensions. I, for one, have found his position hard to fathom. The judge reached this conclusion despite the fact that the Internal Revenue Service had approved interest-paying hybrid plans for 15 years and despite the fact that every other court addressing the issue found that these plans satisfy the age discrimination rules.

In classic fashion in our litigation-happy society, this lone and misguided court decision has spawned a string of copy-cat class action suits. In these suits, plaintiffs assert hundreds of millions—even billions—of dollars in ''damages'' (over and above the benefits they have earned under the plan—to ''correct'' compound interest.

So, the issue we need to address in the legislation before us is to make clear that this lone judge got it wrong and that the IRS and all those other judges got it right. Compound interest in a defined benefit pension is not illegal, and the hybrid plan designs satisfy our age discrimination rules.

The legislation before us makes this important clarification but unfortunately only with respect to the future. While addressing the hybrid issue prospectively is constructive and must be done, failing to clarify the legal regime for the more than 1,500 or so existing hybrid plans and their 8.5 million or so participants will have a number of seriously adverse consequences.

First, employers will continue to face the threat of truly business-busting litigation, which will drain resources from productive use and hamper their competitiveness. Ironically, despite the good efforts of our Senate committee leaders to insert ''no inference'' language in this bill, judges may read the legislation's prospective-only approach as suggesting the illegality of current plans, thereby worsening the litigation risk faced by employers.

Second, in light of the unresolved threat to current hybrid plans, employers are increasingly likely to abandon their pension plans, denying additional retirement benefits to millions of American families and leaving new hires at these companies with no pensions whatsoever.

Third, as the healthy companies that sponsor hybrid plans leave the pension system, they will aggravate the financial troubles of the Pension Benefit Guaranty Corporation, PBGC. Indeed, hybrid plan sponsors today pay 25 percent of the per participant premiums received by the PBGC. So, unfortunately, while this legislation is designed to shore up the PBGC, we have left unaddressed one of the central threats to that agency's solvency.

In addition, while clarifying the age discrimination rules for hybrid plans prospectively and retroactively, it is my hope that the future conferees of this legislation will considering making a specific reference to pension equity plans—a type of hybrid plan other than cash balance plans—in the statutory language. The reason for this need is that the Cooper v. IBM decision deemed not only cash balance plans to be illegal, but pension equity plans as well.

The legislation before us does not address pension equity plans, specifically. Rather, it leaves the issue of whether pension equity plans receive the same beneficial clarification as cash balance plans up to the Treasury Department in later administrative guidance. This will simply prolong the legal uncertainty that is driving many employers to consider ending their pension equity plans altogether. This leading variety of hybrid plan—the pension equity plan—is in equal need of the same congressional attention as cash balance plans. I urge the future conferees to address this accordingly and to be mindful that the conversion process in pension equity plans is typically different than that of cash balance plans.

Mr. President, it is my sincere hope that as this important bill moves through the legislative process we can address the hybrid design issue in a comprehensive way. We must do so in order to remedy the significant harms to workers and employers that will result if we only address the issue prospectively. In addition, we must give equal consideration to both cash balance and pension equity plans as two legal regimes of hybrid plans. I look forward to working with Chairmen GRASSLEY and ENZI, Ranking Members BAUCUS and KENNEDY, and the future conferees on this bill to ensure a solution that will enhance rather than endanger the retirement security of American families.

Mrs. CLINTON. Mr. President, I would like to begin by expressing my gratitude to Senate Health, Education, Labor and Pensions Committee Chairman ENZI and the HELP Committee's ranking member, Senator KENNEDY, for working together, and with our colleagues on the Senate Finance Committee, to address the wide spectrum of pension issues in the bipartisan bill that is before the Senate today. Their tremendous hard work and conscientious approach to this legislation—and that of their staffs—is commendable. They have had to balance many factors.

Enhancing the retirement security of Americans is one of my priorities in the Senate. Retirement security is, simply put, one of the most important challenges facing our Nation. Single-employer and multiemployer pension plans play an essential role in providing retirement security for so many New Yorkers and millions of Americans around the Nation.

For a variety of reasons, we have recently seen defined benefit plan terminations that have jeopardized the retirement security of many Americans and placed additional burdens on the defined benefit system. I have heard from New Yorkers who are gravely concerned that they will not see the benefits they worked so hard to earn.

A recent report by the Government Accountability Office, GAO, highlights some of the deeply troubling trends facing the defined benefit pension system. GAO notes that ''the nation's private defined benefit, DB, pension system, a key contributor to the financial security of millions of American workers and their families, is in long-term decline.'' The GAO report describes a sharp drop in the number of single-employer DB plans in recent years, down to less than 35,000 in 2002 from more than 95,000 25 years ago. According to the GAO, the same period of time has seen ''the number of active participants in such plans dropping from 27.3 percent of all national private wage and salary workers in 1980, to about 15 percent in 2002.''

In addition, the GAO report notes that ''structural problems in industries like airlines, steel, and auto parts have led to large bankrupt firms terminating their DB plans, with thousands of workers losing some of their benefits and saddling the Pension Benefit Guaranty Corporation, PBGC, with billions of dollars in unfunded benefit guarantees.'' Moreover, the PBGC reported in 2004 that the ''rapid decline'' in the net financial position of its single-employer program from 2000 to 2004 ''resulted from several very large losses (primarily from steel and airline industry plans), lower interest rates that raised the value of PBGC's liabilities and declining stock prices.''

A look at the finances of the PBGC provides a snapshot of the aftermath of these trends. According to the PBGC, in 2004 it insured more than 34 million single-employer plan participants and more than 9.8 million multiemployer plan participants. The PBGC reported that its single-employer program swung from a surplus of $9.7 billion in 2000 to a $23.3 billion deficit in 2004, and that its multiemployer program showed a deficit of $236 million in 2004. Yesterday, the PBGC reported its financial results for fiscal year 2005. According to the PBGC, the single-employer program deficit as of September 30, 2005, was $22.8 billion, and the multiemployer program deficit had grown to $335 million. While at this time it appears the PBGC will be able to pay benefits for some time to come, it is incumbent upon us, as elected representatives, to take meaningful steps to address these challenges to the survival of the defined benefit system and the dangers these challenges pose for workers, retirees, and their families who are depending upon the viability of that system.

A central goal of that effort should be ensuring that employers offering single-employer pension plans keep pension promises and have incentives to remain in the defined benefit system to provide good pensions to their employees. Additional goals include protecting older, longer term employees from unfair changes in their pension plan, enhancing financial transparency, and shoring up the PBGC. It is also important to work to maintain and strengthen the multiemployer pension system.

The Pension Security and Transparency Act of 2005 takes important steps towards these goals, including: transitioning to a full funding target; offering incentives for companies to contribute more in good times to help plans get through economically challenging times; tools for the government to use in an effort to help preserve pension plans facing financial challenges; rules intended to help airlines preserve their pension plans; reforms intended to improve multiemployer plan funding; prospective-only rules for cash balance pension plan conversions, with protections for older and longer serving workers; and enhanced disclosure of pension plan finances.

In addition, the defined contribution autoenrollment provisions included in the bill are an important first step in ensuring that employees start saving today. It has widespread support among employers and employees, and is a commonsense provision that I will work to ensure is included in the final conference agreement.

As is usually the case with new legislation of this scope, I believe there is room for improvement and refinement, particularly with respect to ''at risk'' plan funding. I hope that in conference the legislation may be brought in line with the approach to ''at risk'' funding taken in the legislation approved by the Senate HELP Committee in September. We should support efforts of companies that are acting responsibly to preserve their defined benefit pension plans and fund them adequately, in the face of financial distress or cyclical downturns, and we should strive to avoid actions that may, however unintentionally, have the opposite effect of that intended.

Working men and women are counting on the security provided by the benefits they earn through their pensions. Some of the most important decisions of their lives depend on these benefits being there for them when they need them. I am glad that the Senate is acting today on comprehensive pension reform legislation and addressing a wide variety of challenges facing the defined benefit pension system. I will continue to work with my colleagues to enact legislation designed to maintain and strengthen the defined benefit pension system for generations to come.

Mr. KYL. Mr. President, today the Senate is considering long-delayed legislation to reform our defined benefit pension system. While reforms are certainly needed, I must say that I am disappointed with how watered down this legislation has become since we passed it out of the Finance Committee earlier this year.

Obviously, the current system is in dire straits, with the Pension Benefit Guarantee Corporation, the Federal corporation that insures traditional pension plans, running a $22.8 billion deficit for fiscal year 2005. Moreover, the PBGC said that if events that occurred just after the fiscal year's end had occurred a few weeks earlier, the deficit would have been $25.7 billion. If the Government is going to continue to operate a pension-plan insurance program, we must make sure that employers fulfill their pension promises appropriately so that taxpayers are not asked to bail out the PBGC.

This legislation makes a first step toward requiring more realistic funding of pension promises, and it tries to assess more accurately which companies are in such financial difficulty that they are likely to declare bankruptcy and shed their pension plans as part of their reorganization, leaving it to the PBGC to cover their remaining obligations. While I believe the provisions approved by the Finance Committee were stronger and more responsible, I understand that compromises had to be made as the Finance bill was combined with the bill reported out by the Health, Education, Labor, and Pensions Committee. I hope these provisions will be retained and reinvigorated when this legislation is reconciled with the House pension-reform bill.

My primary concern about this legislation has to do with the special provisions for legacy airlines. The bill reported out of the Finance Committee allows certain airlines to freeze their existing defined benefit pension plans so that no new participants can be added and benefits will not increase in any way. Then it allows these companies an additional 14 years to pay off what they owe on these frozen plans. I agree that it makes sense to allow the airlines to freeze their pension plans so that their liabilities do not get any worse. Further, if giving the airlines extra time to pay their obligations will keep them from shifting the debts to the PBGC, then I believe we are acting responsibly to protect the American taxpayers. I must say, however, that this special treatment is unfair to those airlines that have been responsible about funding their pension liabilities or that have different, and more affordable, retirement savings plans for their employees.

Nor is that all we are apparently going to do to provide special relief for the legacy airlines. On the floor, an amendment will be offered, and will likely pass, that will lengthen the amortization period for the so-called ''hard-freeze'' provision to 20 years and to provide separate funding relief to certain other legacy airlines that will not be taking advantage of the ''hard freeze.'' This separate funding relief will allow these particular airlines an extended period to pay their pension obligations, but will not require the airlines to freeze completely their pension plans. Rather, this so-called ''soft-freeze'' would not allow new participants, but would allow benefit accruals if the company funds those accruals. This is terrible policy; if the airlines have the resources to fund benefit accruals, they should fund their existing obligations on a timely basis instead of taking on new obligations. Congress should not grant any company the ability to amortize its obligations over a longer period of time without requiring it to freeze its pension plan completely. Further, increasing the 14-year ''hard freeze'' to 20 years is overly generous and provides a one-size-fits-all plan for two legacy airlines that have very different financial situations. I am pleased that Chairman GRASSLEY will oppose this amendment.

Finally, with respect to the Akaka amendment, I opposed this measure because it would exacerbate the already terrible fiscal problems facing the PBGC. Unfortunately, Federal regulations dictate that individuals age 60 and older may not serve as airline pilots. I am one of 20 Members of this Chamber who have cosponsored Senator INHOFE's bill to remove this blanket prohibition, a stricture which I have concluded cannot be justified as a safety measure. I am heartened that the Senate Commerce Committee will have the opportunity at their next markup to rectify the inequitable treatment of older pilots the right way—by removing the arbitrary mandatory retirement age. Unfortunately, the Akaka amendment would proceed the wrong way—by swelling the PBGC's deficits by raising the ceiling on allowable benefits.

Overall, this legislation moves forward the process of reforming our badly broken defined benefit pension-plan funding system, and for that reason I will support it even though I am very opposed to its special funding relief for certain legacy airlines. I hope, as the conference committee meets to work out a final version, that the conferees will work for the best possible funding requirements for all companies that participate in the system; that they will keep some kind of a benchmark to identify struggling companies; and that they will keep the legacy airline relief as responsible as possible. We must remember that the American taxpayer will be asked to bail out the PBGC if the system, which is supposed to be self-funding, cannot sustain itself. And a taxpayer bailout is an outcome that I know none of us wants to happen.

Mr. HATCH. Mr. President, I rise today in support of the pension reform bill we are now considering. This bill is the product of a great deal of work by members of both the Committee on Finance and the Committee on Health, Education, Labor, and Pensions. As a member of both of these committees, I congratulate the chairmen and ranking Democratic members for their leadership and hard work. It is not often that Senate committees share jurisdiction of an issue the way that the Finance and HELP Committees share the jurisdiction of pensions. Bringing the bill to this point required an unusual procedure where the separate bills approved by the two committees, which were quite different in many respects, were combined into one bill for floor consideration.

The resulting bill, which is before us today, is complex, controversial, and imperfect. It is also very much needed. Traditional pension plans, also known as defined benefit pension plans, are facing a crisis today. The number of defined benefit pensions is in decline. In 1980, around 40 percent of private sector jobs offered pensions to their employees. Today, only 20 percent do.

Since 1985, the number of defined benefit plans backed by the PBGC has declined from 114,500 to fewer than 32,000. Clearly, our economy, and the retirement options for our workforce, are undergoing rapid evolution. This is due to a number of complex factors, but prominent among them is the high expense of starting and maintaining these plans, and the uncertainty and volatility of funding them. The rules governing defined benefit pension plans are among the most complex of all U.S. laws.

Another factor in the debate about pensions is that the American workforce is changing in a fundamental way. No longer is the idea of going to work for one employer and remaining with that company for one's entire career considered the norm. Increasingly, workers are mobile and find themselves changing companies and even careers several times over the course of their work lives. For these workers, the traditional pension plan is not necessarily the ideal. For many such workers, and for most companies in younger industries, hybrid pension plans are more beneficial.

Unfortunately, these hybrid pension plans are under a legal and a legislative cloud today. So what could be a pretty good answer in today's world to the problems of cost, complexity, and inflexibility of a defined benefit plan has been practically halted by legal challenges and by political controversy over how to best clarify the status of hybrid plans.

One of the biggest concerns, however, is that the Pension Benefit Guarantee Corporation (PBGC) is under increasing financial strain as more and more companies with defined benefit plans have defaulted on their pension obligations and left this agency to carry the load. Just yesterday, the PBGC released in its annual report that it had only $56.5 billion in assets to cover $79.2 billion in liabilities. In addition, the report showed the PBGC's exposure to losses from pension plans sponsored by financially weak employers rose to $108 billion from $96 billion the year before.

When I earlier said this pension bill is complex, controversial, and imperfect, it is because, to be effective, the bill must walk the very narrow path between two important public policy objectives. On the one hand, we need to ensure that when an employer establishes a pension plan, and makes inherent promises to its workers, it provides the funds necessary to secure those commitments. Failure to do so does great harm to the millions of employees and their families who depend on those pensions for a secure retirement. It also does harm to our economy, and it puts the PBGC, and possibly the American taxpayer, at great risk.

On the other hand, we must not forget that employers have no legal obligation to offer such pension plans to their employees. These benefits are voluntary, and they must stay so. The Congress has an obligation to ensure that the pension laws provide rational and sensible rules that encourage employers to offer these benefits to their employees. This means they should be understandable, predictable, and easy to administer. If we place unreasonable or overly aggressive requirements on employers, many or most will simply terminate their pension plans, leaving employees without the benefits they might have had.

I believe we must be careful to ensure that pension plans that are currently fully funded and are sponsored by strong employers are not weakened inadvertently by the reforms in this legislation. However, this is not as easy to accomplish at it may sound.

I believe the bill before us goes a long way toward accomplishing the goals of strengthening the pension system, shoring up the PBGC, and not discouraging employers from staying in the system. However, it has certain provisions that, in my view, may not lead us in the direction we need to go. I hope that as the bill goes to conference that it can be further improved.

More specifically, I remain concerned about the provision in the bill that would require certain plan sponsors with credit ratings that have fallen below investment grade to fund their plans faster than they would otherwise have to do. While this provision has improved from its first version in the Finance Committee, I believe it is still too onerous.

I am also very concerned about the impact of this bill on the struggling airline industry. We simply must provide relief to the airlines in funding their pension obligations or many will have to turn their obligations over to the PBGC. Therefore, I am supporting the amendment of the Senator from Georgia, Mr. ISAKSON, and I hope our colleagues will also support it.

There is much to be said in favor of this combined bill. I am very pleased to see that many of the defined contribution provisions that the Finance Committee has long worked on getting enacted have made their way into this bill. I am also glad that certain protections were added for the multiple employer pensions plans that are very important to many of the electrical and telephone cooperatives that are common in many rural States, including my home State of Utah.

I am also pleased to see that the managers' substitute amendment also includes a provision on which I have been working for several years now with the chairman and ranking Democrat of the Finance Committee. This provision, which is important to many associations around the Nation, including the Utah Auto Dealers Association, ensures that they will not unfairly have to give up their health plans, upon which many employers and their families now rely.

And I am happy that we have finally included language that makes it much easier for firms to enroll automatically new employees into a firm's 401(k) plans. One thing we know about human behavior is that inertia is a powerful force—change of any sort can be difficult for even the best of us. The beauty of automatic enrollment is that it uses this inertia to our advantage. The firms that have used automatic enrollment thus far have reported vastly higher savings rates, and employees have been quite pleased with the result.

While nearly everyone on both sides of the aisle supports making automatic enrollment easier for firms, we differ on just how much easier we should make it. There have been a number of proposals that would have made it much easier for firms that offer automatic enrollment of new employees to meet the convoluted pension distribution requirements that deter many smaller firms from even offering 401(k) plans. Unfortunately, the version currently embodied in this bill does not, in my view, adequately address this problem. Still, half a loaf is better than none, and I welcome anything that clears the way for firms to offer automatic enrollment.

I would like to take another couple of minutes to address more fully the issue of hybrid pension plans, which combine elements of defined benefit and defined contribution plans. I think that corporate America is recognizing the importance of these plans. At the same time, there is a cloud of legal uncertainty hanging over them. My hope is that we address this uncertainty in the conference.

Although the defined benefit pension system has helped generations of Americans achieve retirement security, we have witnessed a decline in these plans during the last several years, as I mentioned. While the modern workforce remains interested in the security of employer funding and Federal insurance guarantees, it also demands portability and a greater level of control regarding retirement benefits. Given these diverse criteria it is easy to see why so-called hybrid pension plans have become so popular. These cash-balance and pension equity plans, in which over 9 million Americans currently participate, incorporate the attractive features of a defined contribution plan while offering much of the security associated with traditional defined benefit plans.

Hybrid pension plans are nothing new. In 1991 the Treasury issued regulations that described a safe harbor testing method for cash balance pension plans under nondiscrimination rules. Five years later, the IRS issued Notice 96–8 describing the structure and operation of cash balance pension plans as well as citing the previous safe harbor rule. This notice and prior regulation stood as the official authority from Treasury and IRS on how a cash balance pension plan should be designed and operated. Many plan sponsors even received favorable determination letters from the IRS that their converted cash balance pension plans met all requirements to be qualified to preferred tax treatment under the Internal Revenue Code, including all relevant nondiscrimination requirements. More recently, in 2002 the Treasury issued proposed regulations that clearly established hybrid pension plans and plan conversions as nondiscriminatory against older workers. Most employers who made these plan conversions did so as part of a good-faith effort to protect the retirement security of their employees.

Although many courts have ruled that these plans do not discriminate based on age, they continue to come under attack. The bill we are currently considering does a good job of establishing the principles for evaluating whether post-effective date conversions of a traditional defined benefit pension plan to a hybrid pension plan are permissible. However, the bill does not clarify that employers who previously adopted hybrid pension plans in good faith, based on generally accepted legal principles and in reliance on guidance issued by the Internal Revenue Service, should not be disadvantaged compared to employers who adopt hybrid pension plans in the future.

If Congress does not clarify the legality of pre-effective date hybrid pension plans and plan conversions, it is likely that these plans will be abandoned in favor of programs that shift investment risk for retirement savings back to participants, such as 401(k) plans. The uncertain climate for hybrid pension plans has already had a profound adverse effect on defined benefit plan formation and continuation. I hope that in conference we can consider some moderate and fair retroactive provisions in order to give some legal clarity to these plans.

This bill should not be considered the final word on this issue. It represents good progress, and I am encouraged that those who had placed holds on its consideration have agreed to release them. By approving this legislation, we can move into conference where I believe we can improve the bill even further.

Again, I thank those who have worked so hard on this legislation, and I urge my colleagues to join me in supporting it today.

Mr. SMITH. Mr. President, I would like to commend Chairman GRASSLEY and Senator BAUCUS on their leadership in passing the Pension Security and Transparency Act of 2005. It accomplishes a great deal in reinforcing the security and financial viability of the defined benefit pension system. Americans have worked very hard to earn their pension benefits, and this bill does a lot to ensure that their retirements will be secure.

A number of important reforms will also improve the defined contribution system. In particular, I am proud that a number of these defined contribution reforms were taken from the retirement package that Senator CONRAD and I introduced earlier this year.

S. 1783 included a key piece of our legislation promoting automatic enrollment in 401(k) plans. Automatic enrollment has been shown to increase participation rates in these retirement plans significantly—especially among low and moderate income individuals.

S. 1783 also clarifies the fiduciary rules with respect to defined contribution plans and annuities. Today, very few employers offer annuity distribution options in their defined contribution plans partly due to confusion surrounding the appropriate fiduciary standard. I believe we need to provide retirees with the option to turn a portion of a lump sum into a guaranteed stream of income so that we can ensure they do not outlive their savings as they enter the increasingly long retirement phase of their lives.

On this front, I believe that there is much more we can do to encourage individuals to provide themselves with a guaranteed stream of income for life by providing tax incentives for annuitization.

In particular, we need to provide incentives for retirees without employer provided retirement plans to save. Because many workers benefited from employer provided retirement plans, they may have little saved for retirement. Aside from Social Security, almost one-half of all Americans have only their personal savings to fall back on in retirement. Therefore, I believe we must offer additional encouragement for these retirees to choose retirement income that is guaranteed to last as long as they live, and will not decrease based on their investment results.

I look forward to working with my colleagues to ensure that all Americans have a secure retirement.

Mr. ROCKEFELLER. Mr. President, I am very pleased that the Senate is finally taking action on much needed pension reforms. As the Senate does its work today, there are more than 44 million Americans working hard to earn traditional pension benefits. Steelworkers, coal miners, flight attendants, autoworkers, carpenters, grocery store employees—workers of every description are putting in long hours, in part, because they have been promised that when they retire, they will continue to receive some income from their employers.

Traditional, defined benefit pension plans have been an important part of workers' compensation for generations. Guaranteed retirement income protects workers from the risks of the stock market. And with a steady monthly check, retirees know they cannot outlive their income. We owe it to all of those workers to be sure that the pension benefits they are earning today will be there for them in the future.

Unfortunately, our pension system has failed too many people already. And in West Virginia, sadly, we understand all too well what happens when pension benefits are not paid as promised. Last year, more than 11,000 West Virginians received a pension check from the Pension Benefit Guaranty Corporation, because their employer had terminated their pension plan.

There are another 313,000 West Virginians still participating in traditional pension plans. We have an obligation to fix the pension system so that those workers and retirees will receive what they have been promised. Companies must be encouraged to continue to promise these valuable benefits, but we cannot accept empty promises. Companies must adequately fund the retirement benefits workers earn.

I believe that, on balance, the bill before the Senate today strengthens the retirement system. This legislation requires companies to better fund pension benefits. It provides workers more information about the status of their retirement plan, and it improves the financial position of the PBGC, which will continue to play an important role as Federal safety net for failed pension plans.

The bill also makes some important improvements to the defined contribution pension system. As Enron collapsed, many employees lost all of their retirement savings because they had heavily invested in their company's stock. I am pleased that Congress is finally acting to better protect employees by giving them more information about their investment options and more rights to diversify those investments.

I am also pleased that the legislation includes a provision to enable the UMWA's Construction Workers Pension Plan to excess assets to cover health care costs for retirees, just as many single-employer private pension plans already do. The Construction Workers Pension Plan currently has more than twice the assets needed to cover pension benefits, while retirees have been forced to pay large premiums for health coverage. With this change, the resources set aside to benefit retired construction workers can be used to best advantage—including helping to cover health care costs.

Yet while I believe there are many positive provisions in this bill, it is not a perfect bill. The bill calls for very difficult compromises. Companies are concerned that the funding rules will be difficult to live by. Workers are concerned that benefits may be limited if employers do not adequately fund the pension plans. I appreciate these concerns. And I am interested in improving this bill.

I had hoped to have the opportunity to support an amendment by Senators DEWINE and MIKULSKI to ease some of the funding requirements imposed on struggling employers. Without fundamentally upsetting the balance struck in this bill, the amendment would have made pension plans easier to maintain. Because a company's credit rating is an imperfect indicator of whether the pension plan is sound, I do not believe that we should impose strict new funding requirements on companies with lower credit ratings. I believe that the managers of this legislation have already crafted so many important improvements to the funding rules that the payments associated with low credit ratings are not necessary to guarantee appropriate pension contributions. Rather, the credit ratings rules may limit employers' willingness to offer such benefits.

The reforms contained in this legislation will dramatically improve the health of the Nation's pension system. Improved pension funding rules are necessary to protect the many workers who have been promised pension benefits, and to shore up the Federal pension insurer. As the final legislation is worked out with the House, I will be working with my colleagues to improve this bill even further.

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 and was read the third time.

The PRESIDING OFFICER. The question is on passage of the bill.

Mr. ENZI. Mr. President, I ask unanimous consent that the next two votes be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The question is on passage of the bill.

Mr. ENZI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 328 Leg.]

YEAS—97

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Dorgan	Mikulski
Allen	Durbin	Murkowski
Baucus	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Frist	Pryor
Bond	Graham	Reed
Boxer	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Salazar
Burr	Hatch	Santorum
Byrd	Hutchison	Sarbanes
Cantwell	Inhofe	Schumer
Carper	Inouye	Sessions
Chafee	Isakson	Shelby
Chambliss	Jeffords	Smith
Clinton	Johnson	Snowe
Coburn	Kennedy	Specter
Cochran	Kerry	Stevens
Coleman	Kohl	Sununu
Collins	Kyl	Talent
Conrad	Landrieu	Thomas
Cornyn	Lautenberg	Thune
Craig	Leahy	Vitter
Crapo	Lieberman	Voinovich
Dayton	Lincoln	Warner
DeMint	Lott	Wyden
DeWine	Lugar	
Dodd	Martinez	

NAYS—2

Levin	Stabenow

NOT VOTING—1

Corzine

(The bill will be printed in a future edition of the RECORD.)

DEPARTMENTS OF COMMERCE AND JUSTICE, SCIENCE, AND RELATED AGENCIES FOR FISCAL YEAR 2006—CONFERENCE REPORT—Resumed

Mr. GRASSLEY. Mr. President, I rise today to discuss the conference report to accompany H.R. 2862, the Commerce, Justice, Science Appropriations Act. While I will be voting for this conference report, I have grave concerns regarding the cuts in the Edward Byrne Memorial Justice Assistance Grants Program.

The Byrne/JAG program is the primary Federal assistance program for State and local law enforcement's counter-drug activities. This program is critical to fighting the domestic war on drugs. In my State of Iowa, this grant program funds highly successful drug task forces. I fear that without these grants, many of these task forces will disappear and the threat from methamphetamine will only grow larger.

I have a letter from Sheriff Thomas Faust, the executive director of the National Sheriff's Association. His letter raises many of the concerns I have already highlighted with regard to the JAG program. Sheriff Faust's letter warns that, "Cuts of this magnitude seriously inhibit law enforcement's abilities and endanger the safety and well being of our communities! In order to keep communities safe from crime and free of drugs, law enforcement must be given the resources they need! The fiscal year 2006 CJS appropriations bill does not provide for those resources."

While I have fears that these cuts in the JAG program will have grave results, because the conference report funds other critical programs, I will vote in support of the conference report.

I ask unanimous consent to print the above-referenced letter in the RECORD.

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

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, November 15, 2005.

DEAR SENATOR: On behalf of the National Sheriffs' Association (NSA) and our 23,000 members, I am writing to express our extreme disappointment and concern over the lack of funding for the Edward Byrne Memorial Justice Assistance Grants Program (JAG) in H.R. 2862, the Science, State, Justice, Commerce and Related Agencies Appropriations Bill.

The JAG program, which was formed by consolidating the Edward Byrne Memorial Grant program and the Local Law Enforcement Block Grant program, is one of the primary federal assistance programs for state, tribal and local law enforcement agencies. State and local law enforcement agencies, including the 3,087 sheriffs' offices across the country, rely heavily on JAG funds for critical operational activities. JAG funds support many of our counter-drug activities, particularly drug task forces. Without these funds, our sheriffs will not be able to sustain the task forces or even fight the war on drugs!

Local law enforcement agencies from all across the country are already out-manned and out-gunned by the drug cartels and street gangs in our communities. Over the last several years we have been forced to deal with the loss of personnel, because of budget cuts to the COPS program. Now the COPS Universal Hiring Program has been zeroed out by Congress, thus abandoning an effective program, and the JAG Funds are being cut as well. These cuts will put an end to any progress that has been made and destroy any hope we might have of winning the war on drugs or ridding our communities of methamphetamine!

For more than a decade, the resources provided under the JAG program have allowed law enforcement agencies to expand their capabilities and make great strides in reducing the incidence of crime in communities across the nation. It is our belief that the lack of federal support for local law enforcement will surely result in increased crime and drug abuse!

The conference agreement would provide just $416 million for the Byrne Memorial Justice Assistance Grants, of which only $321 million is available for local law enforcement assistance. We find this level of funding to be unacceptable and believe that Congress is failing to adequately recognize the mission of law enforcement!

Cuts of this magnitude seriously inhibit law enforcement's abilities and endanger the safety and well being of our communities! In order to keep communities safe from crime and free of drugs, law enforcement agencies must be given the resources they need! The FY06 SSJC appropriations bill does not provide for those resources.

At a time where law enforcement and securing the homeland should be of the highest priority, Congress has chosen to completely dismiss them as a priority! With the rise of terrorism, and the fact that methamphetamine use and abuse has risen to epidemic proportions, Congress should embrace law enforcement, support the JAG program and COPS Hiring Program, and increase their funding, not cut their funding!

Sincerely,

THOMAS N. FAUST,
Executive Director &
Retired Sheriff, Arlington County, VA.

Mr. HARKIN. This bill cuts over $200 million from the Byrne Justice Assistance Grant Program and over $120 million from the COPS Program. These cuts follow on 3 previous years of cuts that have decimated these important and successful law enforcement assistance programs.

In 2002, Byrne was funded at $994 million. Next year, it will be funded at only $416 million—a 60 percent cut.

I am also dismayed that after my amendment to add $34 million in funding to legal services programs passed the Senate, not a single dollar was included in the conference report. Meanwhile a study earlier this year found that over half those eligible for legal aid cannot receive the help they need with critical issues including custody, child support, housing, and more critically right now, navigating hurricane related bureaucracy.

These programs have now been cut so severely that law enforcement in my State will likely be left with no alternatives to layoffs. That simply isn't acceptable. While I will be voting for this conference report because I believe that the appropriators did the best they could within the situation they faced, I want to serve notice on the Senate that we must restore funding to local law enforcement grant programs and to legal assistance next year.

The fault for these drastic cuts to law enforcement programs lies directly with the President and with every Member of Congress who voted for his budget that cut $1.3 billion in law enforcement funding. Appropriators only get a certain amount of money to work with, and that money is set by the budget. It was literally impossible for appropriators to restore all of the $1.3 billion in direct help for law enforcement including over $150 million in cuts to victims, over $300 million in assistance to States overwhelmed with illegal aliens, over $150 million in cuts to juvenile justice programs, almost $500 million in cuts to the COPS Program and $800 million in cuts to the Byrne Program.

It is simply outrageous that 54 Members of this Senate voted not to restore this funding during the budget process and that all 55 Republicans voted for a budget that eliminated this funding. Any one of those 55 people who stands up here and complains about these cuts is a hypocrite because they allowed it to happen.

In my State of Iowa, these cuts that will mean a 42-percent reduction in the amount of Byrne funding available statewide from $4.6 million last year, down from $6.2 million the year before, to only $2.6 million. We will receive only $2.6 million to fund 25 drug task forces, 16 offender treatment programs, and 9 early intervention programs. These cuts will come as my State continues to be in the middle of a meth epidemic.

Our preliminary estimates are that this is going to mean the loss of 27 drug task force salaries and corresponding 1300 fewer arrests. It will mean layoffs. There are no longer any alternatives. It will also mean the loss of 22 Byrne funded programs including innovative and successful treatment programs. These cuts will lead to at least 1,200 fewer meth addicts in prison receiving drug treatment. The result will be to put addicts back on the streets where there crimes will escalate and drive up the costs of prosecuting and incarcerating them the next time around.

These cuts will be devastating. Between fiscal year 2003 and 2005 we had already slashed over $1 billion in direct help to local law enforcement officers. How much more can we expect our law enforcement officers to take?

It is simply amazing to me that this administration and this Congress could be so foolish as to slash funds from programs that work. Between 1993 and 2003, violent crime in this country declined by more than 50 percent—from 49.1 to 22.3 incidents of violence per 1,000 persons. This is the exact same period of time when we provided over $1 billion to the COPS and Byrne programs alone.

Even after cuts to the program, last year the Byrne Program funded 4,316 cops and prosecutors working on 764 drug enforcement task forces nationally. Byrne funding led to 130,000 drug arrests in 32 States, the seizure of 136 tons of illegal drugs, the confiscation of over 7,000 weapons, and the seizure of 7,691 meth labs. It is simply crazy that we are slashing over $200 million from this program in this bill.

Mr. KOHL. Mr. President, I rise in support of the conference report accompanying H.R. 2862, the Commerce, Justice, Science and Related Agencies Appropriations Act for Fiscal Year 2006, but I do so with some reservations. To be sure, this bill funds many programs and agencies vital to the Nation's security and economic strength, and the conferees should be complimented for drafting a balanced spending bill. However, this appropriations measure is also supposed to fund local law enforcement and juvenile crime prevention programs, and in the past, it did so successfully. Unfortunately, this year's version does not adequately fulfill the very important responsibility of supporting law enforcement and crime prevention programs.

Let us first consider the Edward J. Byrne Justice Assistance Grant Program. For more than 30 years, Byrne grants have paid for State and local drug task forces, community crime prevention programs, substance abuse treatment programs, prosecution initiatives, and many other local crime control programs. Talk to any police chief or sheriff back in your home State and they will tell you that the Byrne program is the backbone of Federal aid for local law enforcement. We should not walk away from a program with more than 30 years of success supporting our local police chiefs, sheriffs, and district attorneys.

Sadly, this conference report takes a step in that direction by providing a little more than $416 million for the Byrne grant program. That number represents a cut of more than $200 million from last year's level. Slashing the Byrne program in this manner will have a real and negative impact on local police departments, district attorneys, and community crime prevention programs.

The COPS program is another victim of this conference report. Though my colleagues should be commended for increasing the overall COPS Program from last year's level of $388 million to $478 million this year, I am discouraged that we have zeroed out the Universal Hiring Program completely this year. We should remember that just 3 years ago, the overall COPS program received more than a billion dollars, and $330 million of that was for the hiring program which simply puts more cops on the streets. And that simply has led to a reduction in crime. Do we want to risk this success by abandoning a program that works?

Perhaps the biggest disappointment is how the title V Local Delinquency Prevention Program is treated in this appropriations bill. The title V program is the only Federal program solely dedicated to juvenile crime prevention, and the conference report dedicates $65 million to it. But after one takes away all of the national earmarks that are housed in title V—all worthy programs that I support like the Gang Resistance, Education and Training, GREAT Program—title V is left with a mere $5 million to spread across the entire country. That amount is not enough to build robust juvenile crime prevention programs. I should hope that in the future, we can, at a minimum, fund the title V program at the Senate-passed level of $80 million and do so free of national program earmarks. To be sure, these other programs deserve federal dollars and should be funded as separate line items in order that title V can have sufficient program funds to operate successfully.

Make no mistake, juvenile crime prevention programs supported by title V are worth our support. According to many experts in the field, every dollar spent on prevention saves three or four dollars in costs attributable to juvenile crime. And who can put a dollar value on the hundreds, even thousands of young lives turned from crime and into productive work and community life by the juvenile crime prevention initiatives supported by title V? We can and must do better.

This conference report is the product of many long hours of negotiations and hard work. Subcommittee Chairman SHELBY and Ranking Member MIKULSKI and their staffs deserve praise for a balanced product. Indeed, this bill is the result of compromise and I will vote in favor of it. But I hope that next year we can do a better job at helping our overworked local police officers and giving a ray of hope for disadvantaged children who desperately need our help.

Mr. CORNYN. Mr. President, I rise today to voice my disappointment with respect to the funding level provided for Project Safe Neighborhoods in the fiscal year 2006 Commerce, Justice, and Science Appropriations conference report.

The President's Project Safe Neighborhoods has been one of the most incredibly successful crime prevention programs in our Nation. And today, we passed appropriations with tragically low funding for this important program that has been highly effective at removing from our streets criminals who use guns to carry out their crimes.

When I was Attorney General of Texas, I joined with then Governor Bush to launch Texas Exile. That program, modeled after the effective Project Exile in Richmond, VA, also was extraordinarily successful—providing local prosecutors with the funds to get more than 2,000 guns off the streets and to issue more than 1,500 indictments for gun crimes, resulting in almost 1,200 convictions in its first 3 years of existence alone.

And when President Bush came to Washington, he built upon our success in Texas by making Project Safe Neighborhoods one of his top priorities and launching the Project Exile program nationally—providing badly needed resources to jurisdictions throughout the country to combat gun related crimes.

And in the short time this initiative has been up and running, the results have been astonishing. Project Safe Neighborhoods' prosecution, prevention and deterrence efforts have helped fuel historical lows in gun crime across America as well as a 30-year low in the violent crime victimization rate. Over the past 4 years, Federal gun crime prosecutions have increased by 76 percent—and virtually all of these criminals spend time in prison—for example, 94 percent in fiscal year 2004.

The administration has devoted over $1.3 billion to implement Project Safe Neighborhoods since its inception in 2001. These funds have been used to hire almost 200 new Federal prosecutors dedicated to gun crime and provide grants to hire approximately 540 new State and local gun prosecutors.

While I appreciate any effort this body might take to embrace fiscal discipline—I question the efficacy of choosing to cut a program that literally is saving thousands of lives nationwide and making our society increasingly safer just as we are seeing the significant successes resulting from it.

The additional Federal funding for these State and local gun prosecutors, as well as the associated community outreach efforts and other important initiatives are critical to the success of the program and to the national reduction of violent crime.

That is why I was so concerned when I learned of the shortfall in this funding. None of the $73,800,000 in grants for State and local governments requested by President Bush was included initially in either the House or Senate.

And I was not alone. Chairman SPECTER and Senators GRASSLEY, KYL, SESSIONS and COBURN from the Judiciary Committee as well as Senators SANTORUM and LUGAR joined me in requesting full funding for the program in a letter dated September 8, 2005.

And, I must thank my colleague from Alabama, Senator SHELBY, as well as fellow Texan, Congressman JIM CULBERSON, and their respective staffs, for their help in achieving at least a minimal amount of funding of $15 million that we were able to get into the conference report.

The Project Safe Neighborhoods program serves as a model of coordinated government efforts—with Federal, State and local governments sharing the burden of prosecuting criminals and coordinating their resources to do so. At a time when some Federal agencies struggle to coordinate efficiently with state and local governments—the Project Safe Neighborhoods program serves as a model of efficiency and effectiveness.

In closing, while I voted in favor of the appropriations conference report because of its many important programs—I remain committed to seeking full funding for Project Safe Neighborhoods next year and in the years to come and looking forward to working with my colleagues to ensure that we keep America's streets safe from violent gun-using criminals.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the conference report to accompany H.R. 2862.

Mr. ROBERTS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. CORZINE) is necessarily absent.

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

The result was announced—yeas 94, nays 5, as follows:

[Rollcall Vote No. 329 Leg.]

YEAS—94

Akaka	Durbin	McConnell
Alexander	Ensign	Mikulski
Allard	Enzi	Murkowski
Allen	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Bennett	Frist	Nelson (NE)
Biden	Graham	Obama
Bingaman	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagel	Reid
Brownback	Harkin	Roberts
Bunning	Hatch	Rockefeller
Burns	Hutchison	Salazar
Burr	Inhofe	Santorum
Byrd	Inouye	Sarbanes
Cantwell	Isakson	Schumer
Carper	Jeffords	Sessions
Chafee	Johnson	Shelby
Chambliss	Kennedy	Smith
Clinton	Kerry	Snowe
Cochran	Kohl	Specter
Coleman	Kyl	Stabenow
Collins	Landrieu	Stevens
Cornyn	Lautenberg	Sununu
Craig	Leahy	Talent
Crapo	Levin	Thune
DeMint	Lieberman	Vitter
DeWine	Lincoln	Voinovich
Dodd	Lott	Warner
Dole	Lugar	Wyden
Domenici	Martinez	
Dorgan	McCain	

NAYS—5

Baucus	Conrad	Thomas
Coburn	Dayton	

NOT VOTING—1

Corzine

The conference report was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Iowa.

THE TAX RELIEF ACT OF 2005

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate begin consideration of S. 2020, the tax reconciliation bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2020) to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

Mr. GRASSLEY. Mr. President, before Senator BAUCUS and I give our opening statements, I yield 5 minutes to the Senator from South Carolina for a statement on another subject, and then I presume the Senator from New York wants to follow him for 5 minutes. So there will be 10 minutes before we start this bill, but the 10 minutes is off the 20 hours allotted to this bill.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

UNANIMOUS CONSENT AGREEMENT—S. 295

Mr. GRAHAM. Mr. President, I thank the Senator for allowing us to have this time. I have a unanimous consent request to make for the RECORD. This has been approved by the majority leader and minority leader.

I ask unanimous consent that the consent agreement relating to S. 295, which is a bill about China currency, which was entered on July 1, be modified so that it is applicable under the same terms including any days in December that the Senate is in session but under no circumstances no later than March 31, 2006, with all other provisos remaining.

At this time, I yield to my colleague from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my friend and colleague Senator GRAHAM, who has been a pleasure to work with on this issue, for his help and support.

This extends the privilege we have been granted by the majority leader and minority leader to bring our bill, our proposal, on Chinese currency up at a later date. After our bill on April 6 got 67 votes on a procedural motion, Senator GRAHAM and I agreed to an up-or-down vote on our bill, S. 295, before the August recess.

In July, at the behest of Treasury Secretary Snow and Federal Reserve Chairman Greenspan, we agreed to delay our vote on our bill until the end of the first session of the 109th. Well, that may well be this week. We are finishing up business while the President is, in fact, going to be in China. Senator GRAHAM and I do not think it would be appropriate to vote on this bill while the President is there so we have agreed to delay.

Senators may recall that back on July 21, China promised to let market forces work and they revaluated their currency by a small but significant 2.1 percent. But they said the market should allow the currency to rise or fall about .3 percent a day. Unfortunately, that has not happened. Since the original 2.1 percent revaluation of the yuan, the currency has moved as much in nearly 4 months as China said it would allow it to move in a single day. So in the whole 4 months, it has not even moved a day's worth. Senator GRAHAM and I, frankly, are disappointed in the progress so far. We said at the time it was a good first baby step, but we need additional steps. Thus far, none have been taken.

We are hopeful the President's trip to China will produce positive results. We are willing to forestall our amendment to see what happens on the President's trip.

Under the new agreement, Senator GRAHAM and I can call up the bill in early December, when Congress returns for votes, or early in the second session, with a promise that the bill will be considered no later than March 31, 2006.

We hope and pray China will move. We do not want to dictate anything to the Chinese. We do not want to tell them how quickly they should move or to what degree, but we do need to see some more movement on something that just about everyone agrees ought to happen. The delay of this resolution will be salutary, we believe, to bringing some results.

I yield back my time to my colleague Senator GRAHAM for some concluding remarks. I would also yield the 5 minutes I have been ceded to Senator GRAHAM so he may finish.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I thank my colleague for giving a very good explanation of where we started and where we are today and where we hope to be in the future. Where we started was a situation where China saw no self-interest in allowing their currency to meet international monetary standards of being valued by the market.

The practice of pegging the yuan to the dollar has created a tremendous manufacturing disadvantage for our manufacturers. It has hurt every competitor China deals with. It is a practice that needs to change because China has changed.

Our goal is to allow that change to come about in a reasoned way, in a win-win fashion. The change that occurred, as Senator SCHUMER spoke about, where there was a slight revaluation, was a very good signal coming from China. It was an optimistic event. Since then, 4 months later, very little has happened.

I know the President is going to put it on the table when he goes to China. We stand behind our President in this regard, that we in the Senate, 67 of us, anyway, and the President, through Secretary Snow, and the President himself, have been urging the Chinese to change their currency practices. It is the position of the administration that it should float, while it is also the position of the Senate that China needs to change their currency practices. As Alan Greenspan has said so well, it is in China's self-interest.

I do hope, as Senator SCHUMER said, that after this meeting with President Bush there will be further progress. So I am guardedly optimistic but resolved to make sure we have a level playing field when it comes to dealing with China. This is an opportunity for a win-win. I hope the Chinese will take us up on it and we can have a better relationship.

This one issue is one of the defining moments in the U.S.-China relationship economically and we will see what time yields in terms of these negotiations.

I yield back all time.

The PRESIDING OFFICER. Without objection, the request is agreed to.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I commend my colleagues from New York and South Carolina. This is an appropriate way to handle this issue. Clearly China pegging their yuan to the dollar has caused immense dislocations. It is also fairly clear that a 27-percent tariff on Chinese products coming to the United States is an untenable position and it would not be the right action for the United States Congress to enact legislation which would enact a 27-percent tariff on Chinese goods coming into the United States that, in effect, is a 27-percent tax on products that American consumers would otherwise be purchasing.

Having said that, it is a problem—that is, the Chinese failure to let their currency float. They did let it float a little bit by a couple percentage points not long ago, but most all observers agree that is not enough. To some degree, this issue is tied to Chinese banking reform. Chinese financial institutions have asked the United States and other countries for advice on how to reform their system. There are too many nonperforming loans in the Chinese banking system, which is related to China's inability thus far to let its currency valuate totally freely. There will come a time—and the time is probably sooner rather than later—when this will become an issue and it will come to a head.

Right now is not the time. The Finance Committee clearly takes this issue very seriously. We in the Finance Committee will pay great attention to the degree to which this measure, the Schumer-Graham amendment, should be taken up and passed or modified before reporting it to the floor. Waiting until the end of March of next year certainly is appropriate.

I say to everyone concerned with this issue, we will act in time, and hopefully it is a time when it is an accommodation rather than a confrontation. It is up to both sides of the Pacific, frankly—China and the States—to recognize that we have to get a resolution here. We are two great countries. It is by far better for each country to gauge each other appropriately with eyes wide open. It is not appropriate for either country to sort of stiff-arm each other.

We are here. We are on the world scene. China is on the world scene. China has a huge interest, of course, in China's development but also a huge interest in the stability of the U.S. economy. And vice versa; we do, too, in China.

I urge real leadership in both countries to try to find a solid resolution so we can avoid confrontation. I again thank my friends from New York and South Carolina for their statesmanlike approach to this; namely, not pressing the issue abruptly but rather agreeing to postpone, until March 31, the next deadline.

Mr. President, I would like to turn to the bill before us. The Book of Proverbs counsels: ''Do not quarrel with a man for no cause.'' One might rephrase that for modern times: ''Know when to take 'yes' for an answer.'' That is how I feel about this tax bill before us today.

Last Tuesday, when the chairman of the Finance Committee gave notice of his intention to hold a markup on the tax reconciliation bill, I thought that we were going to have a knock-down, drug-out fight over capital gains, dividends, and the budget deficit. Now it appears that we are going to have an entirely different debate.

When Chairman GRASSLEY first raised the issues of this tax bill with me, I told him: If you take capital gains and dividends out of the bill, I can support it. And the chairman and now the Finance Committee have taken capital gains and dividends out of the bill. And now I do support it. I am willing to take ''yes'' for an answer.

I am gratified that the chairman and the committee have chosen to forgo the capital gains and dividend provisions that they once contemplated. That is a fundamental change. And from this side of the aisle, that is a welcome change.

The job of a committee chairman is a large part of brokerage job. A committee chairman tries to do the most that he can with the votes that he has. I compliment the chairman of the Finance committee for being among the best at counting the votes. And I think that the bill that the Finance Committee brings before us today represents the moderate consensus of the Senate.

For many reasons, the bill before us today is not all that I would have preferred. It is not always the case, as with any Senator. I would have preferred that we had handled this tax cut legislation outside of the reconciliation straightjacket. I would have preferred that we had done more to address the immediate needs of the people affected by the hurricanes that ravaged the gulf States. I would have preferred that we had done more to address active financing, the provision that we have to help our companies be competitive with companies overseas. And I would have preferred that the committee would have paid for the tax cut in this bill. It is not appropriate by any stretch of the imagination that we add to the deficit rather than not adding to the deficit.

But I know that the chairman and the majority leader would have preferred that the votes had added up a little differently in other ways. That would have been their preference. I gave my preference. They, their preference. Neither of us prevailed.

There are many good things in this mark. Extension of the R&D credit is crucial for American businesses to remain competitive. The devastated Gulf States desperately need the help to rebuild that is in the mark. And I appreciate the work that was done to extend the tax provisions that we all know need to be extended. This is the business of the Finance Committee, to make sure that these extensions are extended so there is no cutoff date which causes a lot of problems for people trying to plan, trying to determine what the future is. That is also the business of the Senate.

The bill before the Senate today thus advances what we have in common. It avoids a massive quarrel.

Later, we will need to resist the fiscally irresponsible road down which the House of Representative seems headed. If the conference reports comes back to the Senate with capital gains and dividends it is, we will be back to a different bill. And will be back to the knock-down, drag-out fight we have thus far avoided.

I am pleased that we have a bill before us without capital gains and divided tax cuts it in. I am pleased that we received ''Yes'' for an answer. ''Proverbs'' is something I think we should listen to from time to time. And as a result, I look forward to fewer quarrels on this bill over the balance of the week.

I yield the floor and suggest the absence of a quorum. I will ask the quorum call be equally charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. GRASSLEY. Mr. President, I want to tell my fellow Senators why they should support this legislation, and most importantly thank Democrats for being so patient while Republicans were figuring out a compromise that we could get a majority of Republicans and all members of the committee behind. I thank Republicans for helping us work something out that we could get done. I have enjoyed the cooperation of Senator BAUCUS. Even though we haven't agreed on the details of this specific piece of legislation—I think you heard Senator BAUCUS speak about the bill that just passed the Senate, the pension bill—there was full cooperation not only between Republicans and Democrats but between two different committees that had jurisdiction over it. There will be differences between Republicans and Democrats on this bill.

I compliment my colleague, Senator BAUCUS, for helping us move things along and being so patient in the process.

This afternoon we begin consideration of an important tax relief measure. The bill before the committee today does three important things. First, it acts on our commitment to provide rebuilding assistance to areas of the country devastated by this year's relentless hurricane season. Second, it provides tax relief for American families by ensuring that there is no interruption in tax provisions that are expiring this year. And third, it provides incentives for increased charitable giving while prohibiting transactions that misuse or abuse charitable organizations and their assets.

An important part of this bill is delivery on a commitment we made to residents of the gulf region, as well as more recently impacted areas of Texas and Florida, to provide much-needed relief and resources for economic rebuilding to those areas.

I want to thank the members of the delegations from States that were devastated by Katrina, Rita, and Wilma during this hurricane season. Specifically, I would like to thank Senator LOTT, a senior member of our Finance Committee. I would also like to thank Senators COCHRAN, LANDRIEU, VITTER, SHELBY, MARTINEZ, and BILL NELSON for their input.

I know some are disappointed we could not do more, especially with respect to Rita and Wilma. But, with the revenue available, we could not answer every need.

As promised, we have made our best effort to marry up our compassion for displaced persons and damaged communities with attention to fiscal discipline and the best use of taxpayer dollars. This hurricane relief package represents an effort to most efficiently and effectively use resources under the Finance Committee's jurisdiction to assist in the rebuilding and revitalization of those regions. I will reiterate the guiding principles of our hurricane relief legislation.

First, because market forces will be the driver in getting these regions back on their feet, our bill includes only provisions that encourage and incentivize redevelopment.

Second, our package provides resources only to those who incurred uninsured losses and does not provide for a bailout of those who assumed risk as an insurer in our capitalist, free-market system.

Third, we have focused our limited Federal resources on those most in need—like the many devastated small business employers who were the backbones of these economies and who will be the engines of their future growth and prosperity. And, finally, the bill provides front-loaded incentives on a timely basis to encourage people and businesses to return to the region as quickly as possible.

This bill also extends popular tax relief ranging from tax deductions for families sending kids to college to relief from the expanding reach of the alternative minimum tax. If we let these provisions lapse, we are raising taxes on a significant number of taxpayers.

I would like to talk briefly about some of the important initiatives in our bill. The largest provision in the bill—about $30 billion of tax relief—amounts to half of the net tax package and is designed to keep people out of the Alternative Minimum Tax. This piece of the package affects 14 million American families in every State in this Nation. The AMT is terrible and should be repealed. Until such time, we owe it to American taxpayers to ensure that they are not hit by this stealth tax.

I have a chart here dealing with the AMT. It shows, by magnitude, the number of taxpayers, mostly families with kids, who would benefit from the so-called AMT ''hold-harmless'' in this bill.

Now, everyone should know this information comes from the IRS Statistic of Income. This is the latest available government data on State-by-State effects from tax relief proposals in the 2001 and 2003 legislation. With respect to the AMT, the number for 2006 will roughly double what is shown on this chart. So, any Member who looks at his or her State, should understand the number of families affected will double next year.

There will be critics. You are familiar with them. We all know who they are. They will appear with their charts and their over-the-top rhetoric. They will appear here today and they will claim that our hold-harmless isn't good enough. These critics are very good at criticizing. Let me assure everyone that I don't just want the hold-harmless. I want to reform or eliminate the AMT. I challenge the critics in advance, just as I did in the Spring debates on the budget resolution, to propose an AMT reform plan. Don't just whine about it. Join me in fixing it. I look forward to the critics' plan to fix the AMT.

This bill also includes popular and broadly-applicable tax benefits. I will talk about them individually and use charts as I move along.

Let's take a look at the deductibility of college tuition. This is a benefit for families who send their kids to college. By definition, this benefit goes to middle-income families. A lot of these folks aren't low-income, so their kids don't qualify for Pell grants. But they are not high-income either. They get the full benefit of the deduction if they make up to $65,000 as a single person or $130,000 as a couple. Beyond those levels, the benefit phases out. A lot of these folks are paying significant Federal, State and local taxes and they get no help in defraying the high cost of their kids' college education.

This tax deduction provides help to these hard-pressed middle-income families with a benefit and furthers an important national goal of support for higher education. This deduction runs out at the end of this year. These families will face a tax increase if we don't act on this bill. This chart shows the number of families on a State-by-State basis that benefit from the deduction.

Another benefit addressed in this bill is the small savers' credit. Here, I am talking about a tax credit for low-income folks that save through an IRA or pension plan. We all think savings is important. We all want low-income folks to save for retirement. This chart shows the number of low-income savers who benefit in this bill on a State-by-State basis.

The bill also extends a tax deduction for teachers who buy their own supplies for their students. This provision, developed by Senators WARNER and COLLINS, makes whole teachers who go the extra mile by paying out-of-pocket expenses. Who could argue with that? I'm going to point to a chart that shows on a State-by-State basis the number of teachers taking this deduction.

This bill also extends small business expensing. Many small businesses use this benefit to buy equipment on an efficient after-tax basis. It is good for small business. It is good for small business workers. It is good for economic growth.

My final chart deals with the State and local sales tax deduction.

For the States of Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming, this bill helps 12.3 million taxpayers in your States. Tennessee is the home of my friend, the majority leader. He has worked hard to get this bill to the floor. Nevada is the home of my friend, the Democratic leader. Unfortunately, the Democratic leader has fought this bill tooth and nail. Hopefully, he will see the light now that we are on the floor. I hope he will work with me to guarantee that folks in his State will be able to deduct their sales taxes next year.

These provisions are bipartisan and millions of American taxpayers rely on them. Every Senator ought to help us pass this bill for these provisions alone.

The bill addresses expiring business and individual provisions known as the ''extenders.'' These provisions include the research and development tax credit and the work opportunity tax credit.

This bill also includes many of the charitable incentives introduced in the CARE Act and which have previously passed the Finance Committee and the Senate. I appreciate the work of Senators SANTORUM and BAUCUS in working with me to balance these incentives with several of the much needed reforms that are supported by the charitable sector, the Treasury Department, I.R.S. and donors and taxpayers overall.

Last, but not least, this bill contains loophole closers and tax shelter fighting provisions that raise revenue.

This bill is bipartisan. I thank my friend and ranking member, Senator BAUCUS, for his cooperation. He and I were not partners on this bill at the beginning and through a large part of the process, but we teamed up yesterday in the Finance Committee. As always, his cooperation and good humor make a big difference.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum and ask unanimous consent it be charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from North Dakota?

Mr. BAUCUS. Mr. President, I yield to the Senator from North Dakota for purposes of offering an amendment.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DORGAN. Mr. President, I was not aware that time had to be yielded for the purpose of offering an amendment. I appreciate that, but the Presiding Officer was asking ''who yields time.'' My understanding is a Senator can seek recognition and, therefore, offer an amendment on his own volition.

The PRESIDING OFFICER. The Senator is correct. The Chair was not aware that the Senator from North Dakota was going to offer an amendment, but thought we were in general debate.

AMENDMENT NO. 2587

(Purpose: To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and to rebate the tax collected back to the American consumer, and for other purposes)

Mr. DORGAN. Mr. President, I offer an amendment on behalf of myself, Senator DODD, Senator BOXER, Senator REED of Rhode Island, and Senator LIEBERMAN. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Mr. DODD, Mrs. BOXER, Mr. REED, and Mr. LIEBERMAN, proposes an amendment numbered 2587.

Mr. DORGAN. 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 printed in today's RECORD under ''Text of Amendments.'')

Mr. DORGAN. Mr. President, this is not a new subject. It is one myself, Senator DODD, and others have spoken about on the floor, as a matter of fact, in recent days and weeks.

Let me describe briefly that it is, in fact, an amendment that is identical to the legislation we have offered that would create a windfall profits tax on profits of the major integrated oil companies, profits above $40 a barrel for oil, the purpose of which would be to collect that money and rebate it in its entirety to consumers. Or in the alternative, if the major integrated oil companies are using that money to invest into the ground or to build refineries above ground to expand the supply of energy and, thereby, bring down the price, they would be completely exempt from the windfall profits tax.

If they are using their profits above $40 a barrel for the purpose of buying back stock, "drilling for oil on Wall Street," as I will describe in a few minutes, or for other purpose that will not expand the supply of oil or the supply of energy, then they would be paying a windfall profits tax on profits above $40 a barrel at the rate of 50 percent—a 50-percent excise tax—all of which would come into the Federal Government, all of which would be rebated by check to individuals in this country in order to help pay for the higher cost of energy that individuals are now facing.

This is very simple. This is not a complex amendment. We are not trying to recalculate income or do things that are particularly difficult. The proposition is simply this: Last year, the major integrated oil companies in this country earned the highest profits in their history. The average price for a barrel of oil was $40 a barrel, and at that price the major integrated oil companies had the highest profits in their history.

Now the price is dramatically above that. It has bounced around from $50 to $60 to $70 a barrel, well above the $40 a barrel, and the profits by the major integrated oil companies—and that is all our amendment deals with, the major integrated oil companies—the profits have been extraordinary.

The third quarter profits: $9.9 billion for ExxonMobil. I have a list of a number of them I can show. But the third quarter profits are very substantial—the highest in the history of corporate America. So you have all of this gain by the major integrated oil companies, and then all of the pain on the other side. The major integrated oil companies have all of the gain. Who has all the pain? All the American people who are trying to pay for the price of a tankful of gas or trying to figure out how they are going to heat their home in the winter or trying to figure out, if they are a farmer, how on Earth they can order that next load of fuel so they will be able to go into the field in the spring. How do they pay for all that? That is where all the pain is. You have all the gain on one side, and all the pain on the other side.

Now, we are told this is just a free market. In fact, I had kind of a minilecture about that from the president of Exxon, the CEO of Exxon. He came to the Commerce-Energy Committee hearing we had, the joint hearing, and he kind of gave me a short little minilecture about the marketplace: This is the marketplace. Interestingly, he did not say: The free market. He said: The world market.

Well, let's think about this for a moment: the world market. For ExxonMobil, $9.9 billion in profits they made just in the last quarter. The world market, he says. Well, let me tell you about the world market. The world market, first, is the OPEC ministers sitting around a table someplace in a closed room talking about production and, therefore, the impact on price. Second, it is the major integrated oil companies that are larger by far than they have ever been because of blockbuster mergers. They all have two names now. It used to be Exxon and Mobil. Now it is ExxonMobil. It used to Chevron and Texaco. Now it is ChevronTexaco. We didn't know they were dating, and they got married. Now, pretty soon, it is going to be "ChevronTexacoShellExxonMobil." It will be all one name. They don't seem to drop any names; they just get bigger and bigger.

So the second part—after the OPEC ministers talk about production and price—is these folks, the major integrated oil companies, that are bigger because of blockbuster mergers and have more raw muscle in the marketplace than they have ever had before.

Third, and finally, we have what are called futures markets. The futures markets are supposed to provide liquidity for trading. Instead, it has become a speculative bazaar, a grand bazaar of speculation. And that then gives us what is called the world price—not a free market price. This has no relationship to either freedom or the marketplace. This is not a free market. What we have is all of this gain and all of the pain on the part of the consumers.

Let me describe a little about what is happening here. Last year, we had the highest profits in our history for the major integrated oil companies. BusinessWeek wrote an article. BusinessWeek is not some liberal rag someplace. We are not talking about some progressive magazine. BusinessWeek is a solid, conservative business magazine. Here is what they say: Why isn't big oil drilling more? Rather than developing new fields of oil, giants have preferred to buy rivals, drilling for oil on Wall Street.

All right. They were talking about last year. Last year, ExxonMobil made $25 billion in net income. They spent almost $10 billion to buy back their stock. Does anybody think that expands the supply of oil? No. No. No. That is an approach that certainly makes the stock options of the CEOs much more valuable. It enhances and enriches the corporation. It does nothing at all with respect to expanding America's energy supply and thereby bringing down prices.

So BusinessWeek says: Why are they drilling for oil on Wall Street? Oil has been over $20 a barrel since mid-1999. That should have been ample incentive for companies to open new fields since projects are designed to be profitable with prices as low as the mid-teens. Nevertheless, drilling has lagged. Far from raising money to pursue opportunities, oil companies are paying down debt, buying back shares, and hoarding cash.

That, from BusinessWeek. Question: If this was the case at $40 a barrel, and oil goes to $60, $65, and $70 a barrel, and consumers bear all of this pain—an increased pain from high prices that in many cases they cannot afford—for a product they must have to drive to work, to heat their homes, to prepare for spring planting, is that fair?

The answer clearly is no.

Will somebody do something about it? Will somebody stand up and say it is time to do something about it? I hope the answer to that is yes.

Just a few headlines. This is from last month: High energy prices lift profits of ConocoPhillips by 89 percent. Its third-quarter profits almost doubled, the first big American company to report earnings for the third quarter. Net income jumped 89 percent.

ExxonMobil, from October 27: $9.9 billion in one quarter, up 75 percent.

From earlier this year: Big Oil's Burden of Too Much Cash. The world's ten biggest oil companies earned more than $100 billion in the year 2004, a windfall greater than the economic output of Malaysia. Their sales are expected to exceed $1 trillion for the year 2004, more than Canada's gross domestic product.

It goes on to say: ExxonMobil, the world's largest publicly traded company, earned more than $25 billion last year and spent $9.95 billion to buy back its own stock.

I mentioned that earlier, but that, in fact, is the case. At the hearing with the major CEOs of the big oil companies, I asked that question of the CEO of ExxonMobil. These were people that run ExxonMobil gas stations in the Washington, DC-Virginia-Maryland region. September 9, this is titled, "Finger Pointing Begins As Gas Prices Jump 24 Cents in 24 Hours; Exxon Dealers Say They Are Chafing Under Higher Prices Decreed From Atop; Station Owners Accuse Big Oil Company of Profiting From Impact of Hurricane Katrina."

That is very important to point out. Hurricane Katrina hurt these oil companies. Oil was well over $60 a barrel before the first hurricane started circulating in the gulf. That is not what got us $60-plus-per-barrel oil. You have gasoline station dealers saying that Exxon was the one that said, through wholesale prices, you must charge 24 cents more in a 24-hour period. They said: What is going on here?

So I asked Mr. Raymond. Well, he wasn't sure that happened. I said: This was a public charge about your company. Didn't you investigate it?

No. We didn't. We might have. I don't know. He wasn't sure.

Let me back up a step to talk about the slightly larger picture and then come back to this question of fairness. We have a serious problem with energy, there is no question about it. This old planet of ours hosts the U.S. citizens in this little part of the planet. There are about 6.4 billion people who live on this planet as we spin around the Sun. We have a prodigious demand, a huge demand for oil in this little spot called the United States. We suck up—when I say ''we,'' the royal ''we''—everybody sucks up about 84 million barrels of oil every day from this earth. Eighty-four million barrels a day are produced from underneath this earth. We also use 84 million barrels a day on this planet. It turns out that 21 million of that 84 is used right here in this country. This country uses one-fourth of all of the oil that is pulled out of the ground.

Is that going to change? Sure. China now has 20 million cars on the road. By the year 2020, 15 years from now, it will have 120 million cars. Add 100 million cars to the mix and the demand to run something through those carburetors or fuel injectors, probably gasoline, ask yourself, in a planet where you are pulling up 84 million barrels a day and this country is using 21 million, one-fourth of it, and we have a demand that now comes from other countries saying, We want some of that, and by the way, we want to have more vehicles on the road—China, as an example—where does the additional oil come from? We have serious issues and significant long-term problems that we have to deal with.

I have my own feelings about that. I largely helped write the hydrogen fuel cell title in the Energy bill. I have ideas about what we need to do. We need to grow energy in our fields with renewable fuels, ethanol, biodiesel. There are so many other things we need to do, including encourage the transition of hybrid cars as we move toward a hydrogen fuel cell future. All of those things I will discuss at greater length at some other time. But at the moment, we live now. We can talk about the longer run. John Kenneth Galbraith used to say, in the long run, we are all dead. But we go into this winter, as consumers in this country, confronting a fuel bill that has dramatically increased over last year, and then reading in the newspaper in the morning, wearing a sweater in a home that you have to keep a couple of degrees cooler in order to afford to heat your home, that ExxonMobil has a 75-percent or 89-percent profit or all the majors are showing massive profit increases. So while they sit there fat and happy, racking up the profits, everybody else is trying to figure out how they pay the price. How do you scrape up the money to heat the home, to fill the car, to fill the tanks so that your tractor and farm equipment is ready in the spring?

People say: Well, if that is a problem for you, that is tough luck. There are a couple of economists writing in recent days—I won't name them—who can tell us everything about the future but can't remember their home phone number. You know the type. They are telling us what will happen here is if people can't afford to pay the cost of energy, it will force them to conserve more. Easy to say for one of these economists who drive around town in their Volvo or Mercedes cogitating about the future. What about the people who have to use a car to drive to work, have to fill the tank with gas but don't have the money to do so, or the people who understand they live in the northern part of this country where we have tough winters and they have to pay the heating bill and it costs a lot of money and they don't have it? What about that?

Senator DODD and I have offered a proposal. It is widely reviled by the major oil companies. I understand that. For them, it is the hog rule: Give us what we want, we want everything, and what you don't get doesn't matter to us. After all, energy is not something that is like every other commodity.

I did an interview with a radio person the other day, and he said: If you are going to have a windfall profits tax with respect to oil profits above $40, what about a windfall profits tax on the shares of Google? I said: Do you drive up to your gas station and say, Fill it up with Google? Gasoline is different. Gassing up your car, providing natural gas or home heating fuel for your home is different. It is a necessity. Everybody needs to do it. It is part of what we are as Americans. It is the way we live. In the long term, we have to make some changes, maybe so. But in the short term, we live now at a time when the major oil companies are exhibiting the highest profits in their history, and everybody else is trying to figure out how on earth to pay the bills.

Senator DODD and I put together the simplest possible plan. We have said: If oil continues at this level, understanding that last year, at $40 a barrel, they had the highest profits in their history for the major integrated companies, we say, for the major integrated oil companies, if the price of oil is over $40 a barrel, we believe that is a windfall profit having nothing to do with fairness or the free market. If the oil companies, however, use that extra money to sink back into the ground for exploration and drilling or to build refineries above ground, to do the things that would expand the supply of energy and thereby reduce energy prices, our proposal will not impact them at all. They will not be taxed. We still don't like the prices, but it won't affect them. They are doing the right thing to expand the supply of energy, which will ultimately bring down the price of energy. But if they do not do that—and they are not; they are buying back their stock, hoarding cash, drilling for oil on Wall Street; they are not doing the right thing—then they would be subject to a 50-percent excise tax on those windfall profits above $40.

Senator DODD and I, unlike others, would not suggest we bring that money into the Federal Government and let it rest here. We suggest that money be brought here and sent out immediately in its entirety as a rebate to the consumers of this country who are paying the bills. They are the ones who are hurt. They are the ones from whom these profits came. They are the ones entitled to have the rebate, if the oil companies are not going to use those profits to expand the supply of our country's energy and oil.

This is a hard proposal to misunderstand. Let me just say, there are many who have deliberately done so. Yesterday, a study came across my desk that appeared to have been paid for by an entity called Investors-Shareholders Alliance. Actually, I Googled them on my computer to find out who on Earth this is. But they have been able not to leave traces, even with a Google search. But I don't need to know who they are without understanding who funded that study. That study purported to evaluate a windfall profits tax by number, which was our bill, and the two authors of the study had not bothered to read it, misdescribed it, and analyzed it in a way that was dishonest.

So the press people called me and asked for my reaction. I said: It is a complete joke, perhaps a Ph.D. joke. These people have really big degrees and tiny glasses and think they are pretty smart. It is just that they forgot to read our legislation because they evaluated something else and attached our number to it. I am assuming that was paid for by the big oil companies. God bless them. They have plenty of money. They will have lots of money to defend themselves against this proposal that we offer today.

I wish no ill will toward the oil companies. I don't. That is not the purpose of this. We produce oil in my State, and I have done plenty of things to be supportive of those who really want to expand America's energy supply and drill for oil. But when I see $65-a-barrel oil and I see people who can't afford to pay the price struggling to figure out how to live day to day, putting gas in the car and heating homes, and then I see record profits announced every single day in the newspapers, I say something is wrong, something is disconnected. It seems to me it falls on the shoulders of this Congress to stand up and do something about it.

On this vote, the question is, Who do you stand with and who do you stand for? We have separate interests, the interests of the largest oil companies who would like even higher profits. When one person said to me, Well, why is it a windfall at $65 a barrel, I said, Let me ask you a question. What if it were $165 a barrel? Would you think that was too much, or doesn't that matter to you?

At $40 a barrel, I would say, finally, last year the major integrated oil companies, larger by far than they have ever been because of blockbuster mergers, made the highest profits in their history. Now they have dramatically expanded those profits at the expense of American consumers. I believe it is unfair. Our amendment would at least begin down the road to try to do something about it. I am pleased to have offered the amendment with my colleague from Connecticut, Senator DODD.

I yield the floor so he may amplify on my comments.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I commend my colleague from North Dakota who has more than adequately and eloquently described this simple proposal that has some significant implications but, nonetheless, one that is clear and straightforward. Let me repeat what my colleague from North Dakota has stated.

First and foremost, these are not two Senators who believe that oil companies ought not to be able to earn a profit. In fact, our economy depends entirely on the capitalistic system, the profit motive. But all of us have learned historically that there are times when, in the absence of some restraint, the profit motive can cause such disruption, such a misalignment in economic circumstances, that it is imperative that those in positions of responsibility try to step in to do something about it. That is clearly what we are trying to do here. The underlying purpose of this amendment is to provide some relief to consumers.

The New York Times reported the other day that one business has been paying roughly $700,000 for its energy needs. The company anticipated its energy costs this year will be $1.4 million, virtually doubling the cost of its energy needs in a brief period of time.

We know, as a result of these rising costs, what consumers are likely to pay for home heating oil. And while we have seen some abatement in the cost of the price of gasoline, clearly the prices are still very high. We believe these individuals deserve a break.

We talk about tax breaks for people who need them. Clearly, the people who will be paying these costs deserve to have some relief. But we quickly point out that this is a choice the industry can make because what the Senator from North Dakota has said is: If, in fact, you do what you ought to be doing, and that is to plow these profits back into energy creation, energy production, development of resources, there won't be an excess profits tax. That is an option that the industry can have at this juncture and one we would hope they would be engaging in. It was stunning to find out that they are taking virtually half of their profits and just buying back their own stock rather than investing in the expanded development of energy resources.

So at the outset, I want to be very clear. We do not begrudge any company, even an oil company, making a profit and a good profit. It is the engine that keeps our economy moving forward. But as we have said, there is a huge difference between profits and profiteering, and it is profiteering, in our view, that is occurring here.

In the opinion of many, the big oil companies have been engaged in just that, in profiteering. The concept of profiteering is not a new one, and this would not be the first time that the Congress of the United States has acted as a watchdog against such profiteering.

One of the most high profile cases was during World War II when Harry Truman, then a Member of this body, chaired an investigation into the profiteering that was going on among wartime businesses. The concept of profiteering is also not new to this particular industry which operates in a market dominated by the OPEC cartel and a few large corporate conglomerates.

Over the past several years, we have seen a steady and steep increase in the price of oil. In the year 2000, when the Northeast Heating Oil Reserve was established because of concerns that I and others had about heating oil supply and price, crude oil was trading at $30 per barrel. Today, just five years later, the price of crude oil has more than doubled. Refining capacity is near 100 percent, yet over the past 25 years, 176 refineries have closed in the United States. And last month, the five largest oil companies recorded record third-quarter profits.

So here we are. Refining capacity is nearly 100 percent, and 176 refineries in the last 25 years have closed their doors.

ExxonMobil, as this graph here points out, had profits in one quarter, 3 months, of $9.92 billion. Imagine the work that went on in the accounting department to make sure it wasn't $10 billion—we will squeeze it down to $9.92 billion, the largest quarterly profit ever reaped by an American corporation in the history of our Nation. In order to make that profit, ExxonMobil took in a record $100.7 billion in revenue in just those 3 months. To put those numbers in perspective, it is larger than the annual gross domestic product of the United Arab Emirates, a large oil-producing nation. Shell Oil earned third-quarter profits of just over $9 billion. BP earned profits of $6.53 billion, and ChevronTexaco earned $3.6 billion. ConocoPhillips earned profits of $3.8 billion. That is all in 3 months. That is a total of $32.8 billion in profits in 12 weeks.

Mr. President, we all recognize that the gulf coast hurricanes temporarily shook the oil industry as it did other industries, interrupting refining and distribution systems across the country, and it may be some time before all operations are back to normal. We recognize that. But that does not explain the steadily rising oil and gasoline prices that consumers and businesses experienced in the months before the hurricanes. Long before any wind and rain hit the gulf coast, these prices were skyrocketing.

There is evidence that the oil industry deliberately restricted supply to boost profits.

Let me explain using their own language in their own reports, by the way. One major oil company in their 2004 annual report says the following:

> We achieved the highest net income in our history, 18.2 billion. This was 48 percent higher than in 2003 as a result of higher oil and gas prices.

The report goes on to say that these higher profits occurred at the same time that the company produced 3 percent less oil than the year before. They produced less and had almost a 50-percent jump in profits. Mr. President, that is not a coincidence, in my view. It was a deliberate move to raise prices by restricting supply.

It was not long ago that Enron traders were caught on tape colluding to manipulate energy prices during the California energy crisis of 2001. One trader was reported telling the operator of a power plant:

> We want you guys to get a little more creative and come up with a reason to [shut the plant] down.

Mr. President, we don't have anything on tape here from these oil company CEOs, but clearly when you look at some of the reports, they brag about 50 percent profits and yet also point to a 3-percent drop in production.

So given the circumstance of fewer refineries operating at or near capacity, coupled with the increased demand for oil and gas, all we are asking is that these industries reinvest their profits to find alternative sources and types of energy.

In the Energy bill that passed only a few weeks ago, we provide massive tax breaks for the energy industry, and yet even with that they don't want to go out and invest in energy resources to boost energy supply. Instead, profits are used to buy back stock or engage in these mega mergers.

My colleague is right to point out; just look at the names. There used to be a Conoco; there used to be a Phillips. Now it is ConocoPhillips. There used to be a Chevron; there used to be a Texaco. Now it is ChevronTexaco. There used to be an Exxon; there used to be a Mobil. Now it is ExxonMobil. I was born at night but not last night, Mr. President. I know what is going on. You don't have to be an economist or have a Ph.D. in economics to figure out what is going on here.

The simple question is, Do we let this happen and just twiddle our thumbs or do we try to do something about it? And we have offered a simple alternative. The alternative is to provide the rebate and give the people who are paying these increased prices a break.

Let me also be clear that the windfall profits rebate is nothing like the one imposed in 1980. First and foremost, the money would be rebated to consumers. The 1980 windfall profits tax was passed to ensure that the oil industry paid its fair share of taxes to the

Federal Government. We are not suggesting that here at all. Just as important, this amendment would apply only to large integrated oil companies, not the independent producers and refiners. They are exempt under the Dorgan-Dodd proposal. The structure of the tax is different as well. In 1980, the tax was imposed on the difference between the market price of oil and the statutory 1979 base price, adjusted quarterly. Our amendment proposes a 50-percent profits tax only on the profit over $40 per barrel. As my colleague from North Dakota has already eloquently pointed out, that number was not chosen arbitrarily.

At that level, record profits were earned by the industry. Yet that price today is substantially more than $40 per barrel. In 1980, the tax included nearly every barrel of oil produced, and thus domestic production suffered. If oil companies do the right thing to increase supply, then there will be no windfall profits tax incurred. I don't know how else to get their attention. Jawboning doesn't seem to work. So why don't we join in a bipartisan way and say to the oil companies—invest in the energy needs of our Nation and, if not, provide some relief to the people out there who are paying these tremendously increased prices.

If domestic production stays relatively constant at 5.2 million barrels a day and oil continues to sell at nearly $65 a barrel, then the windfall profits tax will be approximately $65 million a day.

This is money that constituents of ours across the country could use to offset the record price increases expected for home heating oil this winter or to combat the rising costs of goods and services that are transported on trucks and rails.

I pointed out one business that the New York Times identified the other day as expecting their energy costs to double from $700,000 to a $1.4 million. Obviously, they are going to pass it on as a cost of production. The consumers will pay the additional cost.

I noticed—I see my good friend from Utah—last night the snow was beginning to fall in the home State of my spouse and the State the distinguished Senator represents. This is not just a New England issue. It is going to happen across the country where many expect record cold temperatures this winter. This is not a situation where consumers have a choice. You don't have a choice to stay warm or not warm, to provide for your family or not provide for your family. These people who travel to work every day don't have a choice whether to get into an automobile. They don't have mass-transit systems. There is no other choice but to put gasoline in that car and go to work. Those companies have no choice other than to shut down or swallow the cost and pass it on to their customers.

It is clear that rising energy costs are a drag on the economy, for individuals, for families, businesses, or farmers, and while gasoline prices are coming down all across the Nation to some degree, they are still on average 32 cents per gallon higher than they were just a year ago. And as the winter weather begins to bear down on us, consumers are bracing for higher heating costs. The prices in my State and across the northern tier States are going to go up.

This windfall profits rebate is a solution for working families across our Nation. It is more than the administration or many of our colleagues have proposed. Every time we try to ease the financial burden on individuals and families, we are met with opposition. We have not been able to raise the minimum wage in 9 years. We can't increase the funding for low-income home energy assistance at all. We have been unable to realistically address fuel efficiency. Senator JACK REED of Rhode Island has offered the home heating assistance amendment. Senator KERRY of Massachusetts has also offered it. In the past, we have had joint efforts by Republicans and Democrats on the LIHEAP program. That has all been turned down. Why not do this? If you don't want to have the general revenues pay for increased help, why not ask that these additional huge profits that are being made go back and provide some relief to people?

The administration has been asleep at the wheel for the last several years and was adamantly opposed to embracing conservation measures. In fact, in 2001, Vice President CHENEY said:

> Conservation may be a sign of personal virtue but it is not a sufficient basis all by itself for sound, comprehensive energy policy.

So you can imagine my surprise when the administration trotted out a conservation program, headed by the ''Energy Hog,'' as they call him. I applaud their late arrival to the benefits of conservation, but I am very disappointed that they have done nothing to stem the rising cost of fuel in our Nation. They brought the oil companies in when they were originally crafting their energy policy, but they have been unwilling to jawbone either OPEC or the large oil companies when individuals, families, and businesses are suffering.

This is an amendment that will have tangible benefits to consumers without undermining the oil industry. It gives the oil companies a choice. I hope our colleagues here on both sides of the aisle would embrace the Dorgan-Dodd amendment. I urge its adoption.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I came over to make some remarks in morning business until I heard the remarks of my colleagues on the other side. I have to say that the windfall profits tax that we enacted a number of years ago, I voted against it. It did not work. It was a disaster. I think this would be an equal disaster. A lot of these folks on the other side are the people who today own a lot of drilling offshore where we know billions of gallons of oil are, who have fought against ANWR where they have estimated at least 6 to 8 billion barrels of oil lie ready to be recovered from a plot of ground as small as 2,000 acres—equal to the Dulles airport acreage.

And you could go on and on about how they have made it almost impossible to drill, to build refineries, to do the things that have to be done to bring oil and gas prices down—almost every argument that has come from the other side. And now we are here trying to tax the companies that now are making very good profits, the very companies that are considering how can they find more oil and gas, how can they drill offshore, how can they drill up in Alaska where there is a lot of oil and gas, and how can we duplicate what they have done up there in Canada with their tar sands. Canada has not been stupid about recovery, and it has cost billions of dollars of investment by oil companies to do what they are doing.

Today Canada is producing a million barrels of oil a day, and before too long that number will grow to 3.5 million barrels a day, mostly from their tar sands. I might add that they now have the second largest oil reserves in the world today, second only to Saudi Arabia, and that is 1 million barrels a day from the tar sands and approximately 1 million barrels from other energy sources. We have just as big of a resource in the U.S., but our companies can not get access to it. It's becoming too difficult to get the necessary permits which are often completely bottled up by the environmentalists, even in areas where drilling would be environmentally safe.

I think the height of stupidity was locking up the Saudi Arabia of coal, which happens to be in Utah, by creating the Grand Staircase-Escalante Monument. President Clinton closed up 60 miles south of Utah, an area larger than the Grand Canyon, without having talked or consulted with one political official in all of Utah—not the Governor, not Members of the Senate or House of Representatives, not even Democrats in Utah. That coal is high-moisture, low-sulfur content, environmentally sound coal, which, if blended with the less clean coal of the east and the central part of our country would save billions of tons of particulates in the air. The arguments for closing off that huge source of clean energy are very similar to the arguments being made today by my two illustrious colleagues, for whom I care a great deal.

It is wonderful for some to get out here and beat up on the big old oil companies. It was just yesterday when I was chatting with one of the largest oil companies, and more than anything, they want to invest in new development and take advantage of incentives we put into the Energy bill. They want to develop the tar sands and oil shale in our country, we are 15 to 20 years behind Canada on this, so that we can lower the price of oil and gas in this country, so that our good friends in the eastern and northeastern part of this country do not have to pay the high prices they are paying. These oil companies are often not able, even when they make these profits, to drill because they cannot get permits and, in some areas, cannot even drill where we know there are billions of barrels of oil that would lower the price of oil and gas.

That is why I have found this a little hard to take, as I have been sitting here—I didn't plan on talking on this issue. But I am one of those who put into the Energy bill incentives to develop our tar sands and oil shale, our geothermal, our natural gas, and to develop more refineries because over the last 35 years, we have lost 200 refineries and only built 1. Why? Because it is so doggone hard to get approvals to build refineries in this country.

We can't even produce the amount of refined petroleum we need for our automobiles on the road now. Why? Because we have gone so far to the left wing extreme that we cannot develop our own resources, even in an environmentally sound way.

Also, in that bill I put in the CLEAR Act, which provides incentives for alternative fuel vehicles, alternative fuels, alternative fuel stations, alternative fuel cells. Given some time and some investments, I believe we can solve an awful lot of the pollution problems in our country the right way, through incentives, not by punishing the very companies that make our country work. We need to give incentives and government cooperation so companies can get permits to develop more oil and gas, so that we could bring down the price of oil and gas. But every time they want to do that, every time one of these companies wants to do something like that, guess who is throwing up every roadblock they possibly can and all in the interest of politics, in my opinion, which I think is the sum and total of most of the remarks made today on the floor by my two friends and colleagues—and they are friends—on the other side.

Mr. DORGAN. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I listened to the Senator from North Dakota, and I will be happy to take a question. I didn't come here to talk about this, but I got a little bit upset listening to what I consider to be political talk, which we have all too much of on this floor.

Everyday we have people coming around here giving these populous talks about how we have to bring oil and gas prices down, and yet they make it almost impossible to do it. Come on, America, wake up. I am sick of it. I used to be in the oil business. I know how hard it is.

Let me tell you, in eastern Utah, western Colorado, and southern Wyoming, we have upwards estimated 3 trillion barrels of oil, 1 trillion or more of which they say is recoverable, at probably $30 or less per barrel. But developing that oil will take billions of dollars of investment and all kinds of bureaucratic anguish to get the permitting and other steps necessary to go in and do it. And we are 20 years behind Canada. They didn't allow this type of talk to stop them from developing their tar sands.

I talked to a company yesterday who said they may be willing to put a tremendous multibillion-dollar investment in there, and when industry is through, it will be over $100 billion, close to $120 billion invested. Mr. President, where do we think this money is going to come from? By the way, that 1 trillion barrels of oil in eastern Utah, southern Wyoming, and western Colorado is more recoverable oil than all the proven reserves in the Middle East. But it is going to cost more to come out because it is a different form of extraction. To do it costs billions, if not hundreds of billions of dollars of investment over the years. But it will save our country if we have the wisdom and the fortitude and the foresight to go and do it.

I might also add that we haven't built a refinery, as I have said, in 35 years—1 refinery and we have lost 200 of them. Why? Because it is so difficult to get anything done because of the so-called environmentalists, and I have to call some of them extreme environmentalists because true environmentalists should want us to get some of the things I put into the Energy bill.

I don't believe that oil companies should make excessive profits that they are unwilling to use for furthering their business interests either, but if they are given a chance to use them and go out and get more oil for us and more gas for us, they are going to do it. But every step of the way, they are stymied by the very people here who have been complaining.

I am personally tired of it. I feel sorry for the people in the Northeast. I feel sorry for the people in Utah. Our folks are paying more than I wish they had to pay for gas. I feel sorry for those over in Europe, where they have paid more than $4 a gallon for gasoline now for decades, some as high as $6 a gallon for gasoline because they were overrun by the same type of philosophical talk. And that is all it is, talk that we get on this floor.

I can tell you, the American people have to wake up. This populist talk is not what is going to get us oil and gas, nor is it going to bring prices down, nor are rebates going to help our people over the long run. What will help our people is to develop, in environmentally sound ways, resources that will help get us out of these difficulties.

As for that Saudi Arabia of coal I mentioned in the Kaiparowitz Plateau in southern Utah, we now have the capacity to take that high-moisture, low-sulfur content, environmentally sound coal, and develop clean-burn diesel and clean-burn jet fuel. We have that ability today, and it is locked up because of what I consider to be a political stunt that we are stuck with, for now. It wasn't on this side of the floor or this administration that caused that political stunt.

I think it is time to get rid of the populist talk and start talking reality. It is nice to come out and beat up the oil companies who are making great profits, but who would use those profits if they could to develop more of their products.

Mr. DORGAN. Mr. President, I wonder if the Senator from Utah will yield on that point.

Mr. HATCH. I will be happy to.

Mr. DORGAN. I say to the Senator from Utah, I have 20 minutes left, and I will use them after the Senator from Utah is completed. It may take all the 20 minutes to correct the errors of his presentation.

Mr. HATCH. I would be interested in the corrections because I don't believe you can find what I said to be false.

Mr. DORGAN. Almost all of it was wrong.

Mr. HATCH. No, it wasn't wrong. I lived in this industry. I understand it. If you have a question——

The PRESIDING OFFICER. Senators need to be reminded that they have to go through Presiding Officer.

Mr. DORGAN. I asked if he would yield for a question. I will ask one simple question.

Mr. HATCH. OK.

Mr. DORGAN. I wonder if the Senator from Utah has seen the chart I used on the floor that comes from BusinessWeek, not a progressive rag or a conservative business journal, that says this about the major oil companies which the Senator defended so aggressively at the moment:

> Rather than developing new fields, oil giants have preferred to buy rivals, drilling for oil on Wall Street. While that makes financial sense, it is no substitute for new oil.

They are the ones saying the oil companies are not using these profits to drill and build refineries. They are the ones saying it, not us.

Mr. HATCH. Do you have a question?

Mr. DORGAN. Yes. How do you justify what you said with what is in the BusinessWeek article, and virtually everyone else knows that they are buying back stock, hoarding cash, and drilling on Wall Street?

Mr. HATCH. First of all, BusinessWeek is not a conservative publication. Anything that is not liberal you consider conservative on that side. Secondly, the fact of the matter is, I have been making a pretty good case that it is pretty tough to get permits and get past the environmentalist roadblocks. It is in my State and every other State that has energy. Thirdly, I mentioned the coal that has been locked up because of the machinations of the Clinton administration, the last administration.

Fourthly, I don't think it is even plausible that the oil companies, if they can get permits fast enough to do it, would not invest in more production, since that is their business. Some of them are going to China, to Russia, and elsewhere to make these profits because they are forced to.

I think it is very unfair for my colleagues, as much as I admire you, it is very unfair to come on this floor and brand the oil companies as a bunch of antipatriotic companies.

Let me finish with my remarks, and I will yield the floor. I have been in this business. I know doggone well what it takes and how much it takes and how much it costs to develop oil and gas. I also know how difficult it is to get past the roadblocks environmentalists put up.

I get tired of the populist rhetoric on the other side of the aisle that never gives any consideration to how difficult it is to be in this business. I don't have any financial interest in oil. All I can say is that I have been there, I know what it is like. Of course, these companies are out to make money, and if they have a business plan to buy back their stock, good for them. There are a lot of companies that are buying back their stock so they can compete.

I feel strongly about this, which is why I fought for incentives in the Energy bill—and I fought hard to get them there—to develop the tar sands and oil shale, to develop geothermal, to develop refineries. We hear all this rhetoric about how these oil companies are making all this big money and not building refineries, tell me where they can build them; tell me where they don't have to spend billions of dollars to build a refinery or hundreds of millions to build a refinery, all because of what many people would argue are pseudo-environmental arguments and delays.

We have gone so far on that side that we made it almost impossible for us to develop our own natural resources for our own benefit.

I don't like any company that gouges, and if these companies are gouging, then let's do something about it. But let's not take away, as we commonly do around here, their ability to be able to go out and find oil, drill for oil and do what I think both of my colleagues sincerely want them to do, to go out and produce energy.

You talk to any oil company executive and talk about how difficult it is to get permits and to do what has to be done in this country, it is amazing.

I again point out—and it was not false—the fact that I chatted with one of the major oil companies recently that is going to go into the tar sands and oil shale at the tristate area, and their estimate is that it could cost industry as much as 120 billion bucks. That is a lot of money even for the oil companies. But, boy, would that save our country.

But it will never happen if we keep doing this type of stuff on the Senate floor. I think we have done it for so many years now that we are getting used to it and we ought to answer it.

Mr. President, I want to address another subject that I came here to address. I apologize to my colleagues if I offended them, but do not tell me that what I am saying is false. I know it is true. I for one am doggoned tired of this type of rhetoric.

I want to address the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court, and I would like this put in morning business.

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

(Several Senators addressed the Chair.)

Mr. DORGAN. Mr. President, I object. We are on an amendment on the reconciliation bill.

Mr. HATCH. I have the floor, do I not?

Mr. DORGAN. I ask the Senator to make his unanimous consent request.

Mr. HATCH. I just got the unanimous consent.

The PRESIDING OFFICER. The Senator from Utah has been yielded time and may speak on any subject.

Mr. DORGAN. Did he not just ask for time in morning business?

Mr. HATCH. I will withdraw the morning business request, and I will put it in this RECORD.

The PRESIDING OFFICER. The understanding is that the statement would be placed in morning business, not under this debate but under morning business, and the time will be charged.

The Senator from Montana.

Mr. HATCH. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. BAUCUS. Parliamentary inquiry to the Chair.

The PRESIDING OFFICER. Will the Senator yield for an inquiry?

Mr. HATCH. Of course, I will.

Mr. BAUCUS. Mr. President, I would just like to know how much time has been yielded to the Senator from Utah, as well as how much time is remaining on the amendment offered by the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota has 24 minutes remaining. The Senator from Utah does not have a limit on his time, but he is speaking on the amendment, for which there is 40 minutes remaining.

Mr. BAUCUS. I thank the Chair.

(The remarks of Mr. HATCH are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, this has been entertaining, if not enlightening, to see my colleague get a full tank of indignation in almost a nanosecond, on two subjects in fact. Let me cover the first at least.

My colleague is a good-natured fellow—I like him—my colleague from Utah. In fact, he didn't get angry at me one day some years ago in a full-scale debate when I said to him, if there were an Olympic event for sidestepping, he would win the Gold Medal by far. In fact, he demonstrated that agility again today by sidestepping this point. The center of our colleague's agitation was he said: You cannot produce any more oil because those leftwingers, those environmentalists, will not let you do it.

So I ask, well, how does one explain this then? The Wall Street Journal says the major oil companies are drilling for oil on Wall Street. They are paying down their debt, buying back their shares, and hoarding cash. That is what they are doing with their money. How does one explain that? Did not hear anything, did we? No explanation.

My colleague said he was sick—he said three times he was sick. It is interesting, I suppose I have felt sick about some debate on the Senate floor over these years. I do not think I have ever admitted that, but I would much prefer to see a colleague of mine agitated about the price of energy in a full-scale agitation about what this is doing to consumers, agitated about what it is going to do when somebody on a fixed income cannot figure out a way to heat their home this winter. I would much sooner see a colleague agitated about that than having just come fresh yesterday from, as he described, a meeting with a major oil company, come to make the case for the major oil companies on the Senate floor, and say: You know what the problem is in this country? It is those populists dripping with venom—that word "populists"—those leftwingers, those environmentalists on this side of the Chamber, they are what is wrong with this country.

Let us see if we can peel back a little bit and expose the truth, if I might. My colleague says those environmentalists and those leftwingers have shut down all of these refineries. Oh, really?

No, that is not true. Take it from me, that is not true. By the way, if my colleague would like to come back to the floor of the Chamber at some point, I would love to have a wide-open debate. Let us just talk back and forth and figure out where the facts are.

Let me give a few facts about refineries. I will not read them all, but I could. Do my colleagues want to know the names of the refineries that were shut down in 1995, 1996, 1997, 1998, 1999, 2000? Do my colleagues want the names of the refineries? I will give names of refineries, and when I tell the names of the refineries I will say who shut them down. The oil companies shut them down.

Now, they did not do that so somebody could come to the Senate floor and blame somebody else. They did it because they were approved for big mergers. They became bigger and bigger, and they decided to shut down refineries. Why? They wanted to tighten the refining capacity and therefore increase margins. And they have done it.

I will not say I get sick about somebody coming to the Senate floor to blame others for the oil companies shutting down refineries. But do I think it is fair, and do I think it is truthful? Absolutely not. The evidence is exactly the opposite of what my friend from Utah said. He has a right to say it, and he even has a right to say it with a full tank of indignation. That does not make it right. The American people need to know the truth about these issues.

Shutting down refineries has, in fact, occurred in this country. Why? Because as the oil companies merged and merged and became bigger, they were shutting down refineries. And I will read the names if anyone would like me to. But my colleague has gone and will not be interested in these names, I guess. I would be happy to yield.

Mr. DODD. I say to my colleague, since 1980, 176 refineries have closed their doors, not because environmentalists shut them down. Is it not true, I ask my colleagues, these were decisions made by the industry themselves?

Mr. DORGAN. Absolutely.

Mr. DODD. Does my colleague not further agree that in recent reports one of the major companies we are talking about, in effect, bragged that they had reduced production by 3 percent while profits over the same year had increased 50 percent? That was not some environmentalist reducing production by 3 percent. That was the industry itself that made that decision. Is my colleague familiar with that?

Mr. DORGAN. Absolutely. These record profits, the highest profits in history, are accompanied, by the way, in most cases—let me give an example. Exxon reports a 75-percent increase in net profits to $9.9 billion and they produced 5 percent less oil and gas at the same time.

Part of that was due to the hurricane. But the company admits that even without the hurricane, they would have produced less oil and gas at the same time they had the highest profits in history. How does that square with what our colleague from Utah said? What our colleague from Utah said is not accurate. It is not. He said it with great conviction, he said it with great agitation, and it is wrong. Flat wrong.

There are plenty of other things to talk about with respect to this issue. Our colleague raises the suggestion that we can't drill anyplace. You can't drill anyplace.

Look, I support drilling in Lease 181 in the Gulf of Mexico. The only place he was accurate about was the issue of ANWR. Do I think we should drill in ANWR as a first resort? The answer is no. I think it ought to be the last resort if we ever drill there. We have people on the floor who want to open up all these pristine places, especially ANWR, that we have set aside and let's drill. Katie bar the door, drill anywhere. We have set ANWR aside, but there are plenty of places I think we ought to drill.

This was one of the most partisan rants I have heard for some while on the floor of the Senate. We are used to it. The minute you offer an amendment that does anything to a particularly large industry, I am telling you we have people coming through these doors saying, Who do I stand for? Let me stand for the big interests here.

My colleague said he met with a major oil company executive yesterday. Good for him. As I said before, I don't bear ill will toward the major oil companies. But I wish he were as agitated about the impact of these prices on America's consumers. He is not. He has raised a lot of questions about why the oil companies are not producing more oil, why prices are where they are. The fact is, point after point after point has been inaccurate.

I say to my colleague with respect to Exxon, let's take Exxon. He says the problem is these Senators and all the environmentalists and all the others prevent them from drilling.

What did Exxon do last year? They made $25 billion and used $9.9 or $10 billion to buy back their stock. How does he square that with what he said to the Senate? He is flat wrong.

Sigmund Freud had a grandson named Clement. I was thinking about it, as my colleague was supporting the major oil industries' profits tonight. Clement, Sigmund's grandson, said this: ''When you hit someone over the head with a book and get a hollow sound, it doesn't mean the book is empty.''

We have offered a proposal here in the Senate that has great merit. It has been misdescribed by the oil industry for reasons I understand—I am talking about the major integrated companies—misdescribed by our colleague from Utah tonight as something that would reduce the supply of oil. In fact, the single largest incentive that would exist for expanding the supply of energy in this country would be our proposal because the major integrated oil companies would have a choice. They can either use these windfall profits above $40 a barrel to sink back into the ground, exploring for oil, or building refineries. They can either do that, and therefore be exempt from the windfall profits tax we propose, or they can choose to pay a 50-percent excise tax on the windfall profits—one of the two. Which would you choose? There is no question what you would choose. You would choose to expand the supply of energy and reduce energy prices as a result. That is the incentive in our piece of legislation. That is why it makes so much sense and it is why I was sitting here gritting my teeth, listening to the caricature of this legislation offered by my colleague from Utah and the spirited defense of the highest prices in history by the major integrated oil companies and the disparaging comments about the efforts to see if we can give some relief and give some help and stand on the side of consumers.

I chaired the hearings on the Enron scandal several years ago in the Commerce Committee. I had a lot of people there under subpoena, understanding what they did on the west coast with price manipulation.

I must say this issue of pricing, pricing of energy is critically important because this is not some luxury item. This is a necessity for every family, for their daily needs. We need to get this right. The question is, when we vote on this: Who do you stand with and who do you stand for?

Let me yield some time to my colleague. How much time remains on our side?

The PRESIDING OFFICER. There is 13 minutes remaining.

Mr. DORGAN. Let me yield 8 minutes to my colleague from Connecticut.

Mr. DODD. Thank you. I may not use all that time because we made our points. But I want to join with my colleague and friend from North Dakota.

Let me say at the outset I have a great friendship with my colleague from Utah. We have done legislation together over the 24 years we have served together in this body. He has been here a little longer than I have. I enjoyed that relationship. I am somewhat stunned when my colleague from Utah becomes as exercised as he was over the oil industry and its profits. They have done very well. There is no reason to be upset about the oil industry. The profits they recorded in the space of 12 weeks are unprecedented in American history.

I began to wonder whether my colleague from Utah had even read the amendment the Senator from North Dakota and I offered. It very simply says that, with the profits when oil is in excess of $40 a barrel, you either pay an excise tax which would rebate to consumers to the tune of about $65 million a day, which could be meaningful to families who will be paying much higher costs this year, or reinvest this money, these additional profits, into increased production or developing alternatives the industry says it wants to do. That is what the amendment says.

We have watched the industry shut down 176 refineries in 25 years. One company brags about how profits are up 50 percent, and they themselves reduced production by 3 percent.

In any class in 101 economics, when you reduce supply like that, obviously it gives a justification for increasing price. They admit it in their annual reports. I didn't make up that quote. I am quoting one of the major integrated companies in its message to its shareholders: Profits are up 50 percent, we reduced production by 3 percent.

Then I hear my colleague from Utah talking about some environmentalists as if somehow they had shut down the refineries or they were responsible for reducing refinery capacity. It is the oil industry itself that has been closing refineries.

There are not going to be many more opportunities because we are about to adjourn here. We will not be back until the middle of January. This may be the one opportunity we have to express ourselves on whether we think the industry ought to be doing a better job when it comes to increasing production and providing some relief for the people out there who will be paying these increased costs.

This is not an excessive request. It is one that goes right to the heart of what we have talked about, what we talked about during the consideration of the Energy bill. In fact, as I pointed out earlier, we provide literally billions of dollars in tax breaks for the industry to go out and do some of the things the Senator from Utah talked about.

I voted against that Energy bill, not because there were not some things I liked in the bill but, frankly, because I thought those tax breaks were unnecessary. When you are recording $9 billion, almost $10 billion in profits in 12 weeks, why do you need a tax break? But when the integrated companies report more than $32 billion in profits in 12 weeks and we turn around and provide billions of dollars in tax breaks, I didn't understand that. But that is what we decided to do.

Here we have a chance to say: Listen, you got these additional profits. Put them into energy production or provide a rebate to the people of this country who are going to be paying these increased prices. It is one chance here to decide which side you are on. As I mentioned earlier, we tried to get Low-Income Home Energy Assistance increases for the poorest of our poor, the elderly on fixed incomes, and that has been denied over and over again despite amendments even in the last few days and weeks to provide some relief. That has been repeatedly voted down.

What about providing some relief for people who are going to be paying these additional costs? That is what we are trying to do with this amendment. I commend my colleague from North Dakota. I know some people say, It is a futile effort, why do you even bother? We bother because we think it is right to stand up here.

Other Congresses in other times—where are the Harry Trumans today? We are in the middle of a war right now in the Middle East. He stood up as a Member of this body and he called it profiteering, and he was not accused of being a populist. We celebrate Harry Truman today as someone who had the guts to stand up and tell the truth, whether people wanted to hear it or not. We ought to tell the truth now. These companies are making excessive profits at the expense of our economy and hard-working, honest people. They look to us to provide some help.

That is what we exist for, in part, to make sure you don't have unrestrained activities that will do damage to the average person or average business out there trying to make ends meet.

I again urge our colleagues to support this amendment. It is one chance we have to try to make a difference for these people.

I yield.

Mr. DORGAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 8½ minutes.

Mr. DORGAN. Let me yield myself 4 minutes. I want to reserve 4 minutes. But let me make a comment. I agree with my colleague from Connecticut. Spirited debate is fine on this floor. I didn't like the representation that was made by our other colleague that somehow what we were proposing here is not only unworthy but part of some cabal that is trying to injure this country and, second, using information that is simply not accurate.

The refineries have been closed by the oil companies, not environmentalists. That is a fact. What has happened is when they merged, they closed refineries in order to restrict supply and boost the yields of the refineries. The fact is, we had experts come in. I am talking about experts, I am not talking about politicians. The so-called experts came to the committee. We said, Why are refineries closing? One reason, because their yields are too low and the major oil companies are closing them. That is exactly the case.

My colleague from Utah talked about tax breaks he had sponsored for the oil industry. He talked about yesterday he was visiting with an executive of the big oil industry—which is fine. He talked about the price they pay in Europe, $3 or $4 a gallon. The interesting thing is in Europe the money between the cost of oil and the $3 or $4 a gallon doesn't go into the pockets of the oil companies, it goes to build infrastructure in Europe. They collect it in taxes and use it to invest in the infrastructure of Europe.

But I think it is important to point out what happens here on this floor. When you offer a proposal such as we offered, it doesn't matter if it is the tobacco industry or pharmaceutical industry or oil industry, we will have people trot through these doors of the Senate and rise to the defense of the pricing policy of the pharmaceutical industry or rise to the defense of the pricing policy of the oil industry. I will ask this. If you are going to get agitated in this Chamber, get agitated about something worthwhile. The agitation ought to be on behalf of some families who are trying to figure out how on Earth will I pay the bill? As I read in tomorrow's paper of the largest profits in the history of this country coming into the treasury of the oil companies, how am I going to pay a 50-percent increase in the bill to heat my home? You want to get agitated, get agitated on behalf of those folks and help us do something.

This notion of partisan blame, coming to the Chamber and ignoring the substance of a proposal and then casting partisan blame, in my judgment is a little tired and a little old. This proposal stands on it own merits. If you don't like it, that is fine. I understand that. Vote against it. But don't suggest somehow you are on the side of the consumer if your interest here on the floor of the Senate is to come and stand with the big oil companies, and to believe that profits above $40 a barrel is fine. It is not. It is not fair.

We believe one of two things should happen: Either it all ought to be sunk back into the ground or above ground for exploring for oil and building refineries and expanding America's supply of energy and bring down prices, or it ought to be recaptured and sent back as a rebate to the people in this country who are having trouble paying their bills, as a rebate to every American using energy.

That is our proposal. Controversial for some? Maybe. Is it the right thing to do for the American people? I believe it is, and I hope this Congress, I hope this Senate will as well.

I yield the floor and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. I yield whatever time he consumes to the majority whip.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. I ask unanimous consent that the order for the quorum be rescinded.

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

IMMIGRATION AND COMPETITIVENESS

Mr. BAUCUS. Mr. President, in 1882, an Irish immigrant named Marcus Daly set off an explosion that shook the world. It happened 300 feet under the ground, near Warm Springs Creek, 26 miles west of Butte, MT. When the dust settled, Daly saw before him the shiny ore of the largest copper deposit ever known.

The rich copper vein transformed the American economy. It made America the world's largest copper exporter. And it inaugurated an economic boom for my home State that lasted for decades. It also enriched many parts of America.

Thousands of immigrants made the boom happen. They came from Ireland and Italy, Canada and Scandinavia, Serbia and Croatia, Greece and Syria. They came to America to find work in the new mining town, christened Anaconda. By 1900, immigrants made up 40 percent of Anaconda's population.

These new Americans formed the backbone of the mining economy. And their descendants have woven the colorful fabric of Montana.

Immigrants helped build the American economy. In the 1850s, hundreds of thousands of young Chinese men helped construct the Transcontinental Railroad. At the beginning in the 1870s, Basque shepherd immigrants helped shape the western ranching economy. Beginning in the 1890s, hundreds of thousands of Norwegian farmers lay the foundations of a competitive farming economy in Wisconsin, Iowa, Minnesota, and the Dakota territories. And in the first decades of the 20th century, more than 100,000 Jewish immigrants created New York City's famous garment industry.

Immigrant entrepreneurs and innovators revolutionized the American economy. Scotsman industrialist Andrew Carnegie transformed the American steel industry and consolidated the Nation's railroads. Hungarian Joseph Pulitzer produced a legacy in newsprint. Polish-born producer Samuel Goldwyn left his mark on film.

Once-foreign names became American household brands. Russian-born Max Factor made makeup. Bavarian-born Levi Strauss manufactured clothes. Hessian-born Adolphus Busch brewed beer.

And today, immigrant innovators still populate the cutting edge. Moscow-born Sergey Brin helped found Google. Taiwan-born Jerry Yang founded Yahoo. French-born Pierre Omidyar founded eBay. And Hungarian-born Andy Grove founded Intel.

America remains a nation of immigrants. More than 33 million people living in America were born abroad. More than 9 million came to our shores just between 1990 and 2000.

Since colonial times, immigrants have been vital to the American economy. Their skills and their labor have made our companies, our industries, and our economy more competitive.

Some immigrants come with little more than their strength and ambition. They become our economy's machine operators, factory workers, farm laborers, and service workers.

But many come with master's and doctorate degrees. They work in research laboratories and universities. They sharpen our economy's cutting edge.

This is my seventh address to the Senate on economic competitiveness. Since summer, I have highlighted the importance to competitiveness of education, international trade, healthcare, national savings, and energy, all components we must focus on to make our country more competitive so we have better high-paying jobs and more paying jobs for more Americans. Today, I speak about immigration and economic competitiveness.

Immigrants make our economy more competitive in at least four ways.

First, immigrants provide labor. Marcus Daly needed workers to dig his Montana copper mine. Similarly, today's booming industries require global talent.

Without foreign-born workers, the largest economic expansion in our Nation's history would not have been possible. In the boom years of the 1990s, the labor force grew by nearly 17 million workers. Nearly 40 percent of them were born abroad. Most of these immigrants came when unemployment was at record lows. They filled 4 out of 10 job vacancies, often in regions short on workers, and often in jobs that natives had no desire to fill. Had these immigrants not lent us their strength, our economy would surely have faltered.

Second, immigrants help balance the budget. Tally up taxpayer-funded benefits to immigrants—education, healthcare, social security—and match those costs against what immigrants pay in State, local, Federal taxes. On balance, each immigrant provides a net benefit to the American economy of about $90,000 in taxes over a lifetime. Overall, immigrants contribute $15 billion to our economy every year.

And immigrants will make an important fiscal contribution as the baby boom generation retires. In just 5 years, the number of Americans approaching retirement will increase by nearly half. Most new foreign-born immigrants, on the other hand, are between 10 and 39 years old. And immigrants are likely to have more children than the U.S.-born population.

These younger workers will help fund the coming Social Security, Medicare, and Medicaid benefit payments. Immigrants bolster the deteriorating ratio of workers to retirees. Immigrants provide a shiny vein of ore in a graying economy.

Third, immigrants push the envelope of innovation. Foreign students earn more than a quarter of the Nation's science and engineering degrees. They earn more than a third of science and engineering doctorates. Most of those are in computer sciences and electrical engineering. Foreign students account for as many as four out of five doctoral students in a number of highly-ranked universities. And foreign students bring $13 billion a year to our economy in tuition and fees.

Foreign students' minds help sharpen our economy's cutting edge. Foreign student researchers support work on new medicines, software, and other innovations. Universities patent this research. A 10 percent increase in the number of foreign graduate students would increase patents granted by more than 7 percent.

Patents mean new inventions. Inventions mean new products. And new products mean new profits and new jobs.

Just as important, nearly three-quarters of highly-skilled students stay in America. Instead of taking their skills home and using them to compete with us, they join highly specialized professions in research and academia. They contribute their knowledge to our economy.

At IBM Research and Intel, for example, foreign nationals make up about a third of high-level researchers. At the National Institutes of Health, foreign-born workers make up about half of researchers. In America's top immigration States, foreign-born workers account for 40 percent of teachers and more than a quarter of physicians, chemists, and economists.

Fourth, immigrants drive entrepreneurship. Entrepreneurship is the irreplaceable genius that sparks economic growth. For every famous immigrant entrepreneur like Hungarian financier George Soros or Belgian designer Liz Claiborne, legions of other immigrants push the limits of the economy, or simply provide a neighborhood service.

For more than a century, immigrants have been more likely than native-born Americans to be self-employed entrepreneurs. Since the 1970s, immigrants have helped reverse a national decline in self-employment. Immigrant-run businesses create jobs, tax revenues, and growth. Even small neighborhood businesses can revitalize entire neighborhoods. And small businesses are the primary driver of new jobs.

Immigrants also swell the ranks of high-technology entrepreneurs. Most of the foreign-born scientists and engineers in Silicon Valley have helped found or run a start-up company. Sixty percent of Indian scientists there have participated in start-ups. And fully three-quarters of Indians and most of the Chinese scientists there have plans to start a business. These entrepreneurs are thinking about tomorrow's economy today.

Immigrants devote their labor. They boost our balance sheets. They drive innovation. And they energize entrepreneurship. Immigrants are vital to our economic competitiveness.

Unfortunately, America is not welcoming global talent and labor. In some cases, we have pulled in welcome mat.

State Department visa procedures and security checks intended to keep out terrorists are instead keeping out talent. In the post-September 11 world, America must vigilantly protect its borders. But we must also strike a balance between this vigilance and economic health.

Look at the case of foreign students who want to study at American universities. In 2003, foreign applications to American engineering doctoral programs fell by more than a third—with Chinese applications dropping nearly in half. Despite considerable efforts to reverse this trend, total foreign graduate school applications declined further last year, by double digits in some cases. This year, the number of international students entering American graduate schools finally held steady, despite a 5 percent drop in applications from foreign students.

The decline in applications is not an anomaly. It is a clear trend. At the same time, our economic rivals are actively attracting the world's brightest. Canada doubled its foreign student enrollment last year. And South Korea will triple its foreign student enrollment by 2010.

We unfortunately have also closed the door on talented workers who drive our companies' competitiveness. Our leading high-tech companies—companies like Intel, Microsoft, and Hewlett-Packard—are imploring Congress to raise the cap for visas for highly-skilled workers—known as H-1B visas. These visas are capped at 65,000. That limit is so out of line with demand that we reached the 2005 cap months before 2005 began.

Today's visa and immigration restrictions also make it difficult for major American companies to employ and train their workforce.

Take this example: A global American entertainment company with headquarters in New York hired Indian managers to run its Bangalore office. The company wanted to train these new hires to company standards, as it does with all employees. The company wanted to send the new hires to New York to receive this training, as it does with all management. The company applied for visas on behalf of its soon-to-be Indian office managers.

What happened? The company filed the paperwork. Months came. Months went. It took 3 months just to get an appointment at the U.S. Embassy. Delays continued. Patience wore thin. Costs mounted, with untrained managers on the payroll. And the company finally gave up.

The company applied for visas to Ireland, where the company had its European branch. The visas came in 4 days. The company trained these new managers at the company's facilities in Ireland, and then sent them back to India to work. This created jobs in Ireland, because the company set up a training program there, instead of using existing trainers in America.

This is no way to do business. We are shooting ourselves in the foot.

We must lift the cap on H–1B visas. We do not have a centrally planned economy. The American Government does not tell companies how many workers they need each year. But the cap has that effect, the effect of a centrally planned economy. That is wrong. Let us listen to business leaders and help them maintain and improve their competitiveness. When our premier global companies implore us to lift the H–1B visa cap or risk hampering their growth, the time for politics is over.

We must simplify temporary entry for foreign workers who need to come to America to help our companies succeed. If we wish to remain a cutting-edge economy, we can no longer obstruct companies from training their overseas employees, participating in meetings and conferences, or traveling to trade shows. Our companies have global markets, global supply chains, and global strategies. We need a global workforce.

Our current commitment of 65,000 H–1B visas each year is outdated. It is outmoded and out of touch with today's needs. We should make a bold commitment to expand that cap. Such a commitment would allow us to lock in similar commitments from our trading partners and enhance exports and American services.

We must actively encourage talented foreign students to study, do research, and innovate at American universities and American research institutions. Visa renewals during multiyear studies need to be routine. These renewals should not require all students to first return to their home countries.

For the most exceptional of these students, who have earned advanced science degrees at American universities, we need a simpler process to obtain permanent residence. These are talented, highly educated individuals, who are in a position to keep our economy competitive. If we do not welcome them into our economy—guess what—then China, India, Europe, or Japan will welcome them into theirs.

Three weeks ago, the National Park Service designated the old mining town of Anaconda, MT, as a national historic landmark. Anaconda's mining boom times are now preserved as part of our Nation's history. But Marcus Daly's explosion—when he found all that copper ore—continues to reverberate through the American economy today.

Let us not stamp out the spark of future booms. Let us, rather, welcome the labor, the innovation, and the entrepreneurship of our new immigrants. Let us ensure for ourselves and for our children the shining ore of boom times to come.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CORNYN. Mr. President, I yield myself such time as I may consume from the manager's time.

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

The Senator from Texas is recognized.

AMENDMENT NO. 2587

Mr. CORNYN. Mr. President, I come to the Chamber to respond to some of the arguments that have been made by some of our colleagues in support of an amendment that would impose a so-called windfall profits tax on crude oil and the use of the tax collected to provide an energy tax credit to consumers.

This is an amendment that, while it may make Senators feel good to try to lash out at the oil companies that are making admittedly significant profits, it is the wrong thing to do for reasons I wish to explain.

I think we are here representing our various States to do more than make popular arguments. We are here to make arguments that ultimately make sense and benefit the national interests of the United States of America. I believe passing a windfall profits tax would damage America. It would damage our national security by making us even more reliant on imported oil and, conversely, less reliant on domestic oil because there would be less of it. It would essentially confiscate the legally earned profits of a legal business that has actually made less money than other industries that I will talk about in a minute.

If we are going to determine in the Congress how much of a profit is too much and how much is not enough, I think we are sending a very bad signal. We are ostensibly believers in the free enterprise system in the United States. Certainly there are examples of gouging and illegal profiteering, but those are at the margins. We should not be in the business in the Senate of saying how much is too much and how much is not enough.

I point out the bill pending on the floor already includes a $4.9 billion tax penalty on large integrated oil companies. That is already in this bill—without this windfall profits tax—and imposes a significant penalty tax on the oil industry.

Now, proposals to limit so-called windfall profits are premised on the notion that the oil industry profits are somehow excessive. I would point out to my colleagues that in the second quarter of 2005, the oil industry earned 7.7 cents, not quite 8 cents, for every dollar of sales. The average profit for all U.S. industries during the second quarter was 7.9 cents. In other words, the average profit was two-tenths of a cent more for sales across all industries.

There were 13 industries in the United States that earned higher profits in the second quarter than the oil and gas industry, including banking, at 19.6 cents; software and services, at 17 cents; consumer services, at 10.9 cents; and real estate, at 8.9 cents. Are we going to impose a windfall profits tax on each of these industries that reaped a higher return on their investment than the oil and gas industry? Well, I doubt it. And thank goodness we are not. It simply is wrong to target an industry, particularly one that has not made excessive profits relative to other industries in the United States during this last year, and say: We are going to treat you differently, we are going to discriminate against you because we know you are unpopular, and we are going to tax you at a higher rate than we would otherwise tax business activity in the United States.

Now, we have seen a spike in gasoline prices, up to, on average, $3.07 a gallon, which, thankfully, has dropped a lot now. I was back in Texas this last weekend, and I saw gasoline selling for $1.98 a gallon. That was certainly good news. Those prices are a little bit higher in other parts of the country, obviously, but the good news is, the price is coming down.

It is that law that does not emanate from inside the beltway but one that governs all of our economic activities that applies here. It is the law of supply and demand—the law that this amendment would attempt to tamper with and create perverse incentives that are not good for America. They do not just target this industry, they actually are bad for our national security. They are unfair when you consider other industries. And it violates our fundamental principles as a nation that believes in the benefits of a free market.

But the fact is, one of the things that cramped the supply of gasoline recently was the hurricanes that have damaged refineries and oilfields, including out in the Gulf of Mexico. A lot of the refineries and the oil wells have been offline while they have been repaired and now are largely being restored. What we are seeing, as they are coming online, with more supply, and given the same demand, is that the price is coming down.

But the fact is, as well, that significant portions of the profits of the oil industry are going to have to be used to restore prehurricane infrastructure in the Gulf of Mexico and in the affected region.

One of the problems with this ill-conceived windfall profits tax is it will reduce needed investment. One of the things we need in this country, of course, is a greater supply of oil and gas because we know we are in a worldwide economic competition with countries such as India and China that are becoming increasingly industrialized and consuming more energy than they produce. Here again, the law of supply and demand pertains.

By actually putting a tax on the profits that oil and gas companies have received as a result of their lawful business activity, we will deny them money they can and will invest back into creating a greater supply—exploring for more oil and gas, expanding their refineries—which will, in turn, bring down the price of oil and gasoline.

The other thing I would point out is, we have been here before. We have been there. We tried it. And we found that the effect of a windfall profits tax—no matter how good it feels—simply does not solve any problems and, in fact, creates more problems.

In 1990, the Congressional Research Service analyzed the effects of the windfall profits tax that was enacted between 1980 and 1988. The Congressional Research Service found that the tax reduced domestic oil production from between 3 and 6 percent and increased oil imports from between 8 and 16 percent over its lifetime.

At a time when Senator after Senator, Congressman after Congressman, has stood on the floor of our respective bodies and said, We need to reduce our dependence on imported oil and increase our domestic production, this tax, if imposed, would do just the opposite. It would decrease domestic production. It would increase our reliance on imported oil. It would make America less secure. And it would damage our domestic companies that employ hard-working Americans.

It seems like there are so many good reasons not to adopt this amendment. I cannot think of a single good reason to do it, other than perhaps it makes Senators feel good to try to punish the big bad oil companies for making an excessive profit. But I do not think we want to be in the business of determining how much is enough and how much is too much.

The last thing the Federal Government needs to do is get its clumsy hands on the free enterprise system in a way that damages our precious energy supply. We should be encouraging domestic production. We should be encouraging alternative forms of energy, which, by the way, the higher the price of oil and gasoline gets, the more people begin to look at what are other commercially available alternatives. That is good because what it does is it diversifies our dependency on an energy supply so we are not dependent on just one type of energy.

That is the reason we need to—in addition to producing more oil domestically, expanding the size of refinery capacity so we bring the price down—look at nuclear energy, which is, in part, what we did through our Energy bill we passed this last summer. France, for example, generates 80 percent of its electricity using nuclear power. We need to look at other alternative forms of energy that reduce our dependency on fossil fuels, which cause environmental problems. Everyone who cares about the environment should care about our looking at alternative forms of energy.

There are so many reasons this amendment is bad. I hope my colleagues will consider these arguments. I hope we do not stampede into adoption of this bad amendment based on the populist arguments that oil companies are big, so they must be bad, or somehow argue that to make a profit implies some sort of corruption or inappropriate activity. We have laws on our books against those who violate our anti-gouging laws, but it is no crime to make a profit in a free market system.

It is that profit that creates an investment that expands the supply and ultimately brings the price down. It is the profit earned by these companies that allows them to employ hard-working Americans. If we want to put Americans out of business, if we want to increase our dependency on imported oil and reduce the production of domestic oil, then I guess we should pass this ill-conceived amendment. I hope my colleagues will reconsider and vote against the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I am glad that we are debating this bill on the floor of the Senate. Despite some concerns which I will discuss later, I supported this bill in the Finance Committee. I have heard a lot in the last few weeks from some of my colleagues talking about how we can't afford the so-called tax cuts that this bill was expected to contain. As we have been saying for weeks, the growth package is not about tax cuts. It is about stopping tax increases, tax increases that will affect American families.

The so-called tax cuts that Democratic Members of Congress are talking about are nothing more than keeping current tax law in place. There are dozens of provisions that American families and employers have come to rely on that will expire at the end of this year, if we do not pass this bill. These are provisions that are important to our constituents and to our economy. Let's take a look at some of the items that are in the bill before us.

First, the research and development tax credit will expire at the end of this year unless we act. This is an important provision of the Tax Code that spurs innovation and new technologies. A majority—believe me—of Senators have supported this provision in the past. The bill before us not only extends this provision, it also adds some improvements to make it more relevant to today's economy.

A lot of other important provisions also expire if we do not pass this bill. The deduction of tuition expenses, that provision affects 36,000 Kentuckians; the tax deduction for teacher classroom expenses, this one affects 38,000 Kentucky teachers; and the low-income saver's credit affects 94,000 low-income Kentucky taxpayers. These are Kentuckians that do not deserve a tax increase. I am going to do all within my power to make sure they don't get one.

I am extremely disappointed that this bill does not contain a provision that I considered to be a vitally important one—keeping the tax rate on dividends and capital gains income from increasing. It is very important that we extend this 15-percent rate through the end of the budget window. As this bill moves through the legislative process, I will fight to make sure that the bill that the President ultimately signs includes these vital provisions. It is very hard to dispute the positive impact that the 15-percent rate has had on the macroeconomy. Dividends paid by companies in the Standard & Poor's 500 have been up over 50 percent since this tax change was implemented. Capital gains revenues from taxes to the Federal Government is estimated by some to exceed the CBO forecast by billions of dollars in fiscal year 2006.

But let's talk about which taxpayers are benefiting from these 15-percent rates. In my State, Kentucky, 18 percent of taxpayers benefited from the reduced rates on dividend income, and 13 percent benefited from the lower rate on capital gains income in 2003. These numbers are especially interesting when you consider that Kentucky has a median income that is below the national average. This does not even count the millions of workers and retirees who hold these assets inside their 401(k)s. As we all know, these dividends are very important to the elderly. Many of our retired folks rely on dividends to supplement their fixed incomes from pensions and Social Security.

While it is true that the lower rates do not sunset until the end of 2008, it is important that we send a message to the economy by extending these rates this year. If we have not made these provisions permanent, investors and financial markets will grow increasingly uncertain about the future tax treatment of dividends and capital gains as 2008 gets closer. We cannot risk adding unwanted volatility to the markets and the economy which continue to grow.

Again, let me be clear, the proposals that we are planning to extend in this package are not new tax proposals, they are simply current law. If we do not extend these provisions, we will cause a substantial increase in the tax bills of American families and businesses.

I also express my concern about two provisions currently part of this bill that I strongly oppose. First is a provision that will limit the ability of taxpayers who itemize their taxes to take a deduction for their full charitable contributions, as they do under current law. This change would amount to a tax increase on some taxpayers who make small charitable contributions, and I strongly oppose it.

The second is a provision that will change accounting rules for the oil industry. The accounting rules at issue are not some loophole for the oil industry. All taxpayers with inventories can elect to use LIFO inventory rules—all. It would be unfair to impose different rules standards on only one industry and would set a dangerous tax precedent.

Additionally, as my colleagues well know, we just passed an energy bill this summer. It contains incentives to increase refining production which is so desperately needed and which we have been neglecting for too long. To turn around and take away these incentives just a few months later, as this bill does, makes no sense whatsoever. Our focus needs to be on trying to increase domestic production of oil and refining capacity, and this provision will do exactly the opposite.

I am planning to support this bill on the floor of the Senate, but I am only doing so with the expectation that we will improve it and that the bill that lands on the President's desk will ultimately reflect the views of the full Senate and this Congress.

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

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

A NEED FOR ANSWERS

Mr. REID. Mr. President, tonight the Vice President has come out of his bunker and is speaking at a gathering of Washington, DC, insiders. Of course, it is closed to the press.

Unfortunately, he brought his bunker mentality with him in the speech. He is repeating the same tired attack we have heard from administrative officials over the last 2 weeks.

Mr. President, in the last 24 hours in faraway Iraq 10 of our brave soldiers have been killed. On such a night, you would think the Vice President would give a speech that honors the fallen and those still fighting by laying out a strategy for success. But no, instead we have the Vice President of the United States playing politics like he is in the middle of a Presidential campaign.

Yesterday, a bipartisan majority of this body, the Senate, gave the administration a vote of no confidence for its Iraq policy. The Senate said the era of their no-plan, no-end approach is over.

Apparently, though, the White House didn't get the message. The Vice President's speech tonight demonstrates that once again this administration intends to stay the course and continue putting their political fortunes ahead of what this country needs, a plan for success.

Our troops and the American people deserve better.

The White House needs to understand that deceiving the American people is what got them into trouble. Now is the time to come clean, not to continue the pattern of deceit.

So again, Mr. President, I ask Vice President CHENEY to make himself available and answer the American people's questions. If he has time to talk to DC insiders, as he is doing tonight, oil executives, and even a discredited felon, Ahmed Chalabi, who by the way is under investigation for giving this Nation's secrets to Iran, it would seem he has time to answer the questions of the American people.

Mr. CHENEY needs to stop stonewalling and hold a press conference.

Finally, I would urge the members of the Bush administration to stop trying to resurrect their political standing by lashing out at their critics. Instead, they need to focus on the job at hand, giving our troops a strategy for success in Iraq.

This week we have seen Stephen Hadley, Donald Rumsfeld, President Bush, and Vice President CHENEY lash out at their critics. Yet they all remain silent when it comes to giving our troops and the American people a plan for success in Iraq. I believe this tired rhetoric and these political attacks do nothing to get the job done in Iraq. I truly believe, Mr. President, America could do better.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending amendment be set aside for the purposes of offering an amendment.

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

AMENDMENT NO. 2596

Mr. DURBIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 2596.

Mr. DURBIN. 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:

(Purpose: To express the sense of the Senate concerning the provision of health care for children before providing tax cuts for the wealthy)

At the appropriate place, insert the following:

SEC. ___. SENSE OF THE SENATE CONCERNING HEALTH CARE FOR CHILDREN BEFORE TAX CUTS FOR THE WEALTHY.

(a) FINDINGS.—The Senate makes the following findings:

(1) There are more than 9,000,000 children in the United States with no health insurance coverage.

(2) Sixty-seven percent of uninsured children live in families with at least one full-time worker.

(3) According to the Center for Studying Health System Change, uninsured children, when compared to privately insured children, are—

(A) 3.5 times more likely to have gone without needed medical, dental, or other health care;

(B) 4 times more likely to have delayed seeking medical care;

(C) 5 times more likely to go without needed prescription drugs; and

(D) 6.5 times less likely to have a usual source of care.

(4) More than half of these children are eligible for coverage under either the State Children's Health Insurance Program (SCHIP) or Medicaid, but are not enrolled in those safety net programs.

(5) Most States, struggling with budget deficits, have curtailed outreach efforts.

(6) A focus on simple and convenient enrollment and renewal systems, as well as proactive outreach and educational efforts, could help reach these children and reduce the number of uninsured American children.

(7) Some States, seeing that the Federal Government is not providing assistance to middle class families who can't afford health insurance, are trying to extend coverage to some or all children.

(8) State efforts to cover all children will not be successful without financial assistance from the Federal Government.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate should not vote to extend the capital gains and dividend tax cuts, a majority of the benefits of which go to households with incomes over $1,000,000, until Congress has taken steps to ensure that all children in America have access to affordable, quality health insurance;

(2) the Senate should vote instead to use the funds generated by the expiration of the capital gains and dividend tax cuts to further the goal of ensuring that children have access to health insurance coverage by—

(A) awarding grants to States, faith-based organizations, safety net providers, schools, and other community and non-profit organizations to facilitate the enrollment of the 6,800,000 children who are currently eligible for enrollment in the State Children's Health Insurance Program but who are not enrolled;

(B) paying to each State with an approved State Children's Health Insurance Program or Medicaid plan, an amount equal to 90 percent of the sums expended for the design, development, implementation, and evaluation of enrollment systems determined likely to provide more efficient and effective administration of the plan's enrollment and retention of eligible children; and

(C) establishing a grant program under which a State may apply under section 1115 of the Social Security Act to provide medical assistance under the State Children's Health Insurance Program to all children in their State.

Mr. DURBIN. Mr. President, as we gather in the Senate this evening, there are 45 million Americans who are uninsured.

I have introduced this sense-of-the-Senate resolution and invite cosponsors from both sides of the aisle to establish a national goal that we will eliminate the 45 million uninsured in the next 10 years.

Some are critical of a sense-of-the-senate resolution saying this is ''pie in the sky,'' we could not do that, we could not eliminate 45 million uninsured in America in the course of 10 years. I disagree. If we set it as a bipartisan national goal, if the President and Congress agree it is goal we are going to seek, we can reach that goal.

The amendment which I have just offered will eliminate 20 percent of the uninsured Americans—20 percent of them.

Now, which would be the first group that you would turn to, to give health insurance and give the protection of health insurance? Well, I think most Americans, certainly most American families, would say our children. Would we not want to take care of them first?

There are 9.1 million children in America without health insurance. Let me show you what 9 million children might look like in this depiction. Look at the States in yellow. If you took the children in every one of these States, they would total 9 million children. It gives you an indication of the gravity of this challenge. And it also tells you that we need to do much more. The number of children without health insurance in our Nation exceeds the number of all children living in 21 States and the District of Columbia combined.

According to the Center for Studying Health System Change, uninsured children when compared to privately insured children in the year 2003 were, first, 3½ times more likely to have gone without needed medical, dental or health care; second, 4 times more likely to have delayed seeking medical care; third, 5 times more likely to go without needed prescription drugs; fourth, 6½ times less likely to have the usual source of care.

Let me give you the hard number. Six million children went without needed health care in America in the year 2003.

I am sad to report this year I am afraid it is even more. There are more than 250,000 children in my State of Illinois without health insurance. Most come from working families, such as the Akeys family of Chicago. Annette and her husband own a real estate company. They make about $60,000 a year. That is not a huge sum of money in the city of Chicago. They were forced to give up their family health insurance when their premiums rose to $500 a month. Unfortunately, their 6-year old daughter Katana became ill with a kidney problem and a heart murmur.

Katana was in the hospital for 3 days and the Akeys were left with a $10,000 medical bill to pay out of their own pocket. How did they do it? They took a second mortgage on their home.

The Baldwins from Moline, IL, are another working family who can't afford insurance. Amanda Baldwin manages a fast food restaurant. She makes $556 every 2 weeks. Her husband David is a truck driver. He grosses $1,100 every 2 weeks. They have a 1-year-old son Zachary, but the Baldwins of Moline, IL, have no insurance. Why? Because it would cost $400 a month, which is about one-sixth of their monthly income.

Paula Brooks of Adwardsville, IL, has coverage through the nonprofit agency where she is employed, but she can't afford to add her daughter Brittany, who is 9 years old, to her policy.

There isn't a State in this Union, there isn't a city or town or village in this Nation where you could not find this story repeated over and over and over again—families that can't afford health insurance, children that go without protection.

Let me tell you what has happened since Congress has failed to address this issue. If this is impossible to read as you are following this debate, it is because the print is so small, but what I have is the response of 19 States that have decided they are tired of waiting for Congress. They are trying to expand health care to their citizens. It is pretty clear that many of these States have become desperate. California, Colorado, Connecticut, Florida, Hawaii, my home State of Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New York, Ohio, Vermont, Rhode Island, and Wisconsin, they are doing what we are not doing; they are showing leadership on the issue of expanding health coverage to the people living in their State. For the life of me, I can't explain why this President and this Congress ignore one of the most pressing problems facing America today.

Luckily for the kids of my home State of Illinois, Governor Blagojevich signed a bill yesterday that covers all the children in the State. He calls it the All Kids Program. It will offer Illinois's uninsured children comprehensive health care that includes doctor visits, hospital stays, prescription drugs, vision care, dental care, and medical devices, such as eyeglasses and asthma inhalers.

Parents will pay monthly premiums based on their income. For instance, a family of four that earns between $40,000 and $60,000 a year will pay a $40 monthly premium per child and a $10 copay per physician visit.

But let's make it clear, this Governor in my home State is trying. In Illinois, we are doing something that is not being done in Washington. In Washington, we are not even trying. At the very least, Congress should take steps to ensure all American children have access to affordable, quality health insurance coverage.

Does anyone doubt the popularity of that suggestion, that if you went to the people of America and said, I have a plan that will make sure every kid in America will be covered for a hospital stay, can get to a doctor, can have their prescriptions filled when they need them, regular dental care and vision screenings, is there anyone in America who believes that is an extravagance? I don't think so.

Kids are the least expensive people to insure. The average cost to cover a child in the program in Illinois is $93.23 a month. To cover all 9.1 million children in America, if we decided to expand the program in Illinois to all of America, the cost would be $10 billion per year. Now if you are following this and you say, $10 billion, wait a minute, Senator, that is a huge amount of money for a program, remember this: It is health insurance for every child in America.

Where would we find the $10 billion? We would find it in the legislation that is being debated by the House and the Senate right now: the 2-year cost of the extensions on capital gains tax cuts, tax cuts for the wealthiest Americans. The 2-year cost from 2008 to 2010 is $20 billion. So if we defer the tax break the administration is pushing for the wealthiest people in America, if we say they are not going to receive that tax break for the next 2 years, we would have enough money to provide basic health insurance for every uninsured child in America, and we would eliminate 20 percent of the uninsured Americans with that single act alone.

We could cover all the kids in America for 2 years for the cost of capital gains and dividend tax cuts, and that figure doesn't even include the State share of the program.

The first thing Congress can do is provide States more funding to enroll children who are eligible but not enrolled in SCHIP. These kids account for more than half of all uninsured children.

Before his last election, President Bush campaigned in Pennsylvania, and here is what he said on October 22, 2004:

> We'll keep our commitment to America's children by helping them get a healthy start in life. I'll work with Governors and community leaders and religious leaders to make sure every eligible child is enrolled in our Government's low-income health insurance program.

President Bush, then a candidate, went on to say:

> We will not allow a lack of attention, or information, to stand between millions of children and the health care they need.

That was a few days before the election. Since then no proposal to cover the uninsured children in America has come from this White House nor from this Congress—a campaign promise that hasn't been kept.

The majority leader inserted $25 million in funds for outreach in last week's reconciliation bill. That is hardly enough. That isn't going to reach and insure these children. The bill of the Senator from Tennessee to fund outreach to kids would appropriate $100 million. Once we get all eligible kids enrolled, we should provide the Department of Health and Human Services with funds to grant to States that want to cover more children in their State.

Very briefly, here is what my amendment does. It expresses the sense of the Senate that the Senate should not vote to extend the capital gains and dividend tax cuts until Congress has taken steps to ensure that all children in America have access to affordable, quality health insurance.

The majority of the benefits of capital gains and tax cuts go to households with incomes over $1 million a year. Aren't kids in America a higher priority than millionaires? And how many times do people in the course of a campaign or on this floor talk about family values and moral values? Here is a nice moral choice for the Senate: Is it more important to give a tax break to someone making more than a million dollars a year, or provide health insurance for 9 million uninsured children in America?

How does that play out, whether your inspiration is the Bible, the Torah, whatever it happens to be? I think most who have religious convictions and feelings and believe there are moral values we are fighting for say this is a pretty simple choice: a choice between tax cuts for people making over $1 million a year or health insurance for 9 million uninsured children.

Specifically, my amendment would provide grants to States, faith-based organizations, safety net provider schools, and other community and non-profit organizations to facilitate the enrollment of 6.8 million children currently eligible for SCHIP and not enrolled.

It covers 90 percent of the costs associated with the design, development, implementation, and evaluation of enrollment systems that will provide more efficient enrollment and retention of eligible children.

It will establish a grant program under which a State may apply for a waiver to expand coverage of children in their State.

When I go back home and speak to the families I represent, time and again they say to me: Are you people in Washington in touch with the reality of what is facing us in America? Whether it is a business owner who had to cancel his health insurance because one of his employees had a sick baby which drove the premiums through the roof for every other employee in the pool, whether it is a member of a labor union who says, I am working harder this year, I am getting paid more this year, but I have no take-home pay because it is being taken away from me in health insurance premiums and, Senator, I am getting less coverage, or whether it is a parent worried about a sick child and a medical bill they might never be able to repay—these are the realities of the life in America. It is not the reality of the debate in the Senate. We live in a different world in the Senate. We live in a world where people with a straight face can stand before us and say it is a much more moral thing to do and the right thing to do to give a tax cut to a wealthy person than to provide basic health care for a child in America.

That is the choice, and that is what my amendment will offer to the Members of the Senate. I hope they will choose the children over the millionaires.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. 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. DURBIN. Mr. President, I reserve the remainder of the time for debate on the amendment I just offered.

The PRESIDING OFFICER. The Senator from Iowa.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

FUNDING FOR UNIVERSITY OF ALASKA

Mr. McCONNELL. Mr. President, a provision of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act conference report was intended to transfer certain funds. Unfortunately, an error in drafting made that transfer ineffective. It was clearly the intent of the conferees on that act to provide for the transfer of certain unobligated and unexpended balances to the University of Alaska. We will be taking steps to correct that error at the earliest possible opportunity.

Before the Senate votes on this conference report, I want to take a moment to express my gratitude to Deb Fiddelke at the White House and Michael Allen at the National Security Council for their helpful input and insights into the State Department portion of this bill and the fiscal year 2006 foreign operations and related programs conference report. I appreciate the many courtesies they extend to my staff.

Finally, Secretary Rice and the entire State Department should be aware of the outstanding job Cindy Chang performed in conveying the priorities of the Secretary—indeed, the President—regarding funding for the State Department and our foreign aid programs. My staff and I appreciate the solid working relationship that Cindy has developed with the State Department, Foreign Operations and Related Programs Subcommittee, and she remains vigilant in support of the President's foreign policy agenda.

TRIBUTE TO VIRGINIA ROSE

Mr. REID. Mr. President, I rise today to recognize the contributions of Virginia Rose to Lovelock, NV. After serving the city of Lovelock for 35 years, Virginia retired as deputy city clerk on September 23, 2005.

Virginia has proudly lived in Lovelock all her life. As a young woman, she established a strong work ethic on her family's dairy farm performing daily chores with her nine brothers and sisters.

She continued her hard work as an office clerk for the city of Lovelock from 1961 to 1968. In 1977, Virginia returned as a deputy city clerk and spent the next 28 years as city clerk and treasurer. Virginia's colleagues at the city describe her as a highly motivated and gracious leader who knows how to organize and accomplish what needs to get done.

Virginia continues to serve her community today through active participation in her church, the Pershing County Alumni Association, the Pershing County Democratic Committee, the Lovelock Volunteer Fire Department Ladies Auxiliary, the Sierra Swiss Club, the Lovelock Community Singers, and several other organizations.

Well liked and respected by her community, she has been honored on numerous occasions since 1964. Most recently, she received the Northern Nevada Women of Achievement Award and the Diocese of Reno Outstanding Christian Service Award.

Virginia would likely describe her greatest honor as mother to Kim and Timothy and grandmother to Sarah, Adam, Lauren, and Caroline. She shares in this joy with Glenn, her husband of 46 years.

I have known Virginia for many years. While she is considered a pillar in the Lovelock community, she modestly describes her contributions as a privilege. Her dedication, diligence, and exceptional work has improved the lives of her fellow residents. I hope that you will join me in acknowledging Virginia Rose for her service to the Lovelock community on the occasion of her retirement from the city of Lovelock.

32 YEARS OF DEDICATED SENATE SERVICE

Mr. CRAPO. Mr. President, today I wish to recognize the service of Carolyn Iddings, my Sergeant at Arms customer support analyst. On June 4, 2005, Carolyn celebrated 32 years of service in the Senate.

Carolyn began her Senate career in the office of Senator Mark Hatfield of Oregon. For 16 years, she helped develop many of the systems the Senate uses today including office computers and correspondence management systems. Carolyn then joined the Sergeant at Arms office and has continued to assist in the development and deployment of many Senate information management systems.

Shortly after my election to the Senate, Carolyn was assigned to guide my staff through the complex process of opening a Senate office. Her experience and knowledge of the inner workings of a Member's office were indispensable as she assisted my staff in the opening days of the 106th Congress. She took my systems administrator under her wing and helped him equip in a timely and efficient manner. Thanks to her efforts, my office was up and running the day I was sworn in as a U.S. Senator. Her knowledge of the challenging bureaucratic landscape of the Senate played a key role in the smooth setup of my offices. On numerous occasions Carolyn's help has proven invaluable as our office automation systems have evolved.

Over the last 7 years, Carolyn has answered hundreds of questions, briefed my staff on countless security, information technology, and emergency planning matters. She has shown consistent patience, kindness, and expertise in her interactions with me and my staff, always willing to lend a helping hand. Carolyn demonstrates outstanding professionalism in her job and I wish her the best.

VETERANS AND TROOP DEPLOYMENTS

Mr. BAUCUS. Mr. President, I rise today to commend the contribution of our Armed Forces to this great Nation. It is important to reflect on the sacrifice and commitment of the brave men and women who have put their lives on the line to defend what our Nation stands for—freedom, equality, and justice for all Americans.

Without our veterans, we would not be the free Nation that we are today.

The marines, airmen, and soldiers of Montana have always risen to the challenge by fighting overseas and protecting our homeland.

Over the past 2 weeks 700 members of the first of the 163rd infantry battalion of Montana's National Guard returned home after an 18 month deployment in Iraq and 250 troops from the first of the 189th aviation battalion will return home before the holidays.

I am extremely proud of these men and women, but I also have great concern for them.

Montana now has the highest percentage of veterans per capita in its population than any other state. We also have the highest percentage of female veterans in the country, per capita.

According to the most recent census, the veteran population in Montana is 108,476 out of an adult civilian population of 668,651. Simply put, veterans, and families of veterans, constitute a significant portion of the population in Montana.

They are our mothers, fathers, daughters, sons, sisters, brothers, and friends who are making sacrifices. I take our Nation's commitment to our veterans seriously.

Many Montanans choose to serve because of the economic situation in rural America.

There is no question that rural States are carrying a huge burden when it comes to our current conflicts abroad and these veterans deserve proper healthcare.

I am proud to say that this year the VA Hospital at Fort Harrison, Helena, MT and its outpatient clinics have been ranked as the best VA medical system in the country; however, the shortfalls that we faced in veterans healthcare funding nationwide in 2005 and 2006 are discouraging.

We still need to ensure that those who have given so much for our country are granted their due benefits, and treated with respect. Let's think big when it comes to providing for our veterans and health care.

We must fully fund the veterans' health care system and we should make spending mandatory in order to ensure that those who have given so much to our country are granted their due benefits and are treated with respect and thanks.

Let's think big when it comes to providing for our veterans and health care. We must fully fund the Veterans health care system and we should make spending mandatory in order to ensure that those who have given so much to our country are granted the benefits they deserve.

Since September 11, 2001, about 80 percent of Montana's National Guard members have been deployed to the Middle East, some of them more than once. This Monday in Great Falls, MT, members of our 341st space wing and Red Horse Squadrons from Malmstrom Air Force Base and the Air National Guard will deploy to Iraq.

When they return, they should not have to worry about getting health care and benefits.

As we welcome home our new veterans and deploy troops overseas, let us remember those who have served honorably in all wars, and pay particular attention to those who have made the ultimate sacrifice.

The current wars in Afghanistan and Iraq have taken the lives of the following brave Montanans: SPC Travis Arndt, Great Falls; CPT Michael MacKinnon, Helena; PFC Andrew Bedard, Missoula; LCpl Nicholas Bloem, Bozeman; SFC Robbie McNary, Lewistown; CPL Raleigh Smith, Troy; LCpl Nathan Wood, Great Falls; SSG Aaron Honeyman, Glasgow; LCpl Kane Funke, Kalispell; CPL Dean Pratt, Stevensville; PFC Owen D. Witt, Sand Springs; 1LT Edward Saltz, Big Fork; PFC Kristofer Stoneisfer, Missoula; 1LT Josh Hyland, Missoula.

DEFENSE AUTHORIZATION ACT

Mr. KERRY. Mr. President, drought continues to be a serious problem for many states in this country, and I am very pleased that yesterday, as part of the National Defense Authorization Act for Fiscal Year 2006, we passed legislation that will help small businesses in those States that have been hurt by drought. I thank Senators LEVIN and WARNER, and their staffs, for their help in moving drought relief one step closer to enactment.

This legislation helps small businesses that need disaster assistance but can not get it through the Small Business Administration's disaster loan program. You see, the SBA does not treat all drought victims the same. The agency only helps those small businesses whose income is tied to farming and agriculture. However, farmers and ranchers are not the only small business owners whose livelihoods are at risk when drought hits their communities. The impact can be just as devastating to the owners of rafting businesses, marinas, and bait and tackle shops. Just ask the many small businesses on Lake Mead, outside of Las Vegas, that met with the committee in July: fishing guides that struggle to find ramps that still reach the water to launch their boats; boat dealerships in the county that have lost an estimated $100 million in sales because recreation at the lake is down; marinas paying millions to move their docks, buildings, and utilities, trying to ''chase the water.'' The area usually gets 8 to 10 million visitors a year. However, the impact of drought on Lake Mead has had a serious adverse impact on the regional economy, exceeding $1 billion according to local officials. Lake Michigan has suffered similar economic losses, and its delegation has been pushing for small business relief for years. Sadly, these small businesses cannot get help through the SBA's disaster loan program because of something taxpayers hate about Government—bureaucracy.

The SBA denies these businesses access to disaster loans because its lawyers say drought is not a sudden event and therefore it is not a disaster by definition. However, contrary to the agency's position that drought is not a disaster, in July of 2002, when this legislation was originally introduced, the SBA had in effect drought disaster declarations in 36 States. As of today, 17 States are under SBA drought disaster declarations: Wisconsin, Tennessee, Kentucky, Virginia, Montana, Oregon, Nebraska, South Dakota, Iowa, Oklahoma, Illinois, Arkansas, Louisiana, Mississippi, Texas, Kansas, and California. Adding insult to injury, in those States where the agency declares drought disasters, it limits assistance to only farm-related small businesses. Take, for instance, South Carolina. A couple of years ago that entire State had been declared a disaster by the SBA, but the administration would not help all drought victims. Let me read to you from the declaration:

> Small businesses located in all 46 counties may apply for economic injury disaster loan assistance through the SBA. These are working capital loans to help the business continue to meet its obligations until the business returns to normal conditions. . . . Only small, non-farm agriculture dependent and small agricultural cooperatives are eligible to apply for assistance. Nurseries are also eligible for economic injury caused by drought conditions.

The SBA has the authority to help all small businesses hurt by drought in declared disaster areas, but the agency won't do it. For years the agency has been applying the law unfairly, helping some and not others, and it is out of compliance with the law. The small business drought relief provision that passed yesterday as part of the Defense Authorization Act—and that I introduced this July as the Small Business Drought Relief Act of 2005 S. 1463—would force SBA to comply with existing law, restoring fairness to an unfair system, and get help to small business drought victims that need it.

This legislation has been thoroughly reviewed, passing the committee of jurisdiction and the full Senate three times, with supporters numbering up to 25, from both sides of the aisle. In addition to approval by the committee of jurisdiction, OMB, the Office of Management and Budget, approved virtually identical legislation in 2003. The legislation passed yesterday includes those changes we worked out with the administration, and I see no reason why this should not be retained in the final conference report and sent to the President for his signature.

I thank Senators SNOWE and BOND, our current and past chairs, both of whom have been supportive of this legislation each time it was introduced and passed. And I again thank Senators LEVIN and WARNER.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On September 3, 2003 in Bridgeport, CT, George Hamilton hosted an afternoon picnic at his home. During the picnic, Hamilton and another guest discovered that one of the other men at the event was gay. They attacked and beat the gay man, causing injuries to his face and ribs. According to sources, throughout the attack the men shouted anti-gay slurs.

I believe that our Government's first duty is to defend its citizens, in all circumstances, from threats to them at home. The Local Law Enforcement Enhancement Act is a major step forward in achieving that goal. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

DEPARTMENT OF DEFENSE AUTHORIZATION BILL

Mr. DODD. Mr. President, I rise today to speak briefly on some of the votes that this body held yesterday related to the fiscal year 2006 Department of Defense authorization bill. Overall, this year's Defense authorization bill was a step in the right direction—for supporting our troops, for strengthening our military, and for securing our country. While I regret the limited time that we had to debate amendments, the end result here is, on balance, positive.

There are, however, a couple of important votes on amendments that I would like to take this opportunity to discuss. First, the two amendments on Iraq—one offered by Senator LEVIN, which I cosponsored, and the other a Republican alternative offered by Senator WARNER, which I voted for.

These two amendments were very similar, and they were both steps in the right direction. They both express the Senate's belief that U.S. forces should not remain in Iraq indefinitely. They both establish expectations that calendar year 2006 should be a period of significant transition to full Iraqi sovereignty, thereby creating the conditions for the phased redeployment of U.S. forces from Iraq. They both stress the need for compromise among Iraqis to achieve a sustainable sovereign government. And they both require the President to begin sharing with the American people his campaign plan for success in Iraq.

But these two amendments, despite all of their similarities, have a fundamental difference. The Democratic amendment would have gone one important step further than the Republican amendment that we ended up adopting. It would have required the President to tell the American people not only his campaign plan, but estimated dates for the redeployment of U.S. forces—in other words, a timetable and strategy for success in Iraq. The Levin amendment acknowledged that unexpected contingencies might arise, and that such contingencies might change some of the projected redeployment dates, but I still believe that without these projected dates, we have left ourselves in an open-ended commitment. That is not good for us, it is not good for Iraq, and it is not good for stability in the region.

Ultimately, I supported the Warner amendment because, as I have said, it is a step in the right direction. But it frankly doesn't take us any closer to convincing the American people that the President has a plan or a timetable for bringing our operations in Iraq to a successful conclusion. And I believe that our soldiers and the American public deserve better.

I would also like to briefly address three related amendments offered by Senators GRAHAM, BINGAMAN, and one by both Senators GRAHAM and LEVIN, dealing with the issue of habeas corpus and detainees who are in U.S. custody at Guantanamo Bay, Cuba.

I voted against Senator GRAHAM's underlying amendment on this issue because I believe that it would have been a step in the wrong direction for our country. That is not to say that we should be providing sanctuary to terrorists. We shouldn't. Any coward who is complicit in terrorist attacks against the U.S. and the civilized world must be brought to justice.

I also recognize that the new threat posed by international terrorist organizations such as al-Qaida, and their murderous henchmen, requires law-abiding nations to adapt in how they combat this threat.

But as we adapt to the terrorist threat, we have to make sure that we don't hurt ourselves, and the cause of freedom, in the process. America's judicial system is part of the bedrock of our country. Protecting its integrity should be a cause of highest concern. That is why I voted for Senator BINGAMAN's second-degree amendment to strike the Graham amendment's text that would have stripped U.S. courts of the ability to review writs of habeas corpus submitted by or on behalf of foreign detainees at Guantanamo Bay. I regret that Senator BINGAMAN's amendment failed on a party line vote.

I commend, however, Senator LEVIN for working with Senator GRAHAM to strike a compromise on this issue. The Graham-Levin compromise is not perfect. It certainly doesn't go as far as this Senator would have liked in fixing the underlying text. But faced with the prospect of the original Graham amendment being sent to conference in its original form, I chose to support the Graham-Levin compromise, which is a definite improvement over the underlying text. What is particularly heartening is that Senator GRAHAM, upon reflection, realized that his amendment went too far and accepted the moderating suggestions proposed by Senator LEVIN. My hope is that the conferees on this bill will continue to improve upon the Graham-Levin text.

Mr. President, as I said at the outset, the Defense authorization bill that the Senate passed yesterday is not perfect. But on balance, I believe that it sends a message to our troops that we are here to support them, and that we remain committed to providing them with everything that they need to come home from their missions abroad safely and securely. At the end of the day, that is a good start.

PROFILES IN COMPASSION: IOWANS PITCH IN TO HELP VICTIMS OF KATRINA

Mr. HARKIN. Mr. President, Iowans are a big hearted, generous people, especially toward people in need. And citizens of my State proved this, once again, by extending a helping hand to the victims of Hurricane Katrina. Some Iowans as individuals or in organized groups—traveled directly to the region to give assistance in their areas of expertise. Other collected funds and supplies to send to the gulf coast region. Still others helped to welcome more than 1,400 evacuees who made their way to Iowa. And, of course, countless Iowans reached into their bank accounts to contribute to the Red Cross, the Salvation Army, and other organizations participating in the relief effort.

I would like to mention at least a few of the individuals and groups that went far beyond the call of duty in the aftermath of Katrina.

Even before Katrina made landfall—within 2 hours of receiving an emergency call—the Iowa-1 Disaster Medical Assistance Team based in Kirkwood, IA, began making its way to the gulf. Commanded by Dave Wilson, this team of rapid-response medical professionals set up headquarters in Bay St. Louis and Waveland, MS. In the first 14 days after the Hurricane hit, they took care of more than 2,700 patients. Their facilities were equipped to care for only 125 patients a day, but, on some days, the team cared for as many as 450 people.

Another Disaster Medical Assistance Team from Iowa, this one consisting of 30 members, helped to turn an abandoned hospital in Baton Rouge, LA into a full-fledged emergency room hospital. Key members of this team were Beth Boyd of Nevada, IA; Melissa Groet of Oskaloosa; and Kevin Long of Des Moines. A smaller crew from this DMAT team, all of them environmental health experts, deployed to rural Louisiana where they played a critical role in getting public water systems back online.

Some 140 members of the Iowa Army and Air National Guard deployed from Camp Dodge to the gulf region in a convoy of fuel tankers, water tankers, food and water trucks, and other much-needed equipment. Dubbed ‘‘Joint Task Force Iowa,’’ their mission was to provide medical, logistics, and water-purification support in Mississippi. In addition, the 185th Air Refueling Wing of the Iowa National Guard provided evacuation, transport, security, and fuel-handling missions from its base in Sioux City.

Meanwhile, back in Iowa, thousands of Iowans went into action in those initial days and weeks after Katrina hit the gulf. For example, the Iowa Jaycees collected enough supplies to fill 20 semi tractor trailers bound for Louisiana. Half of the semis carried clean drinking water, and the others carried diapers, baby wipes, batteries, hygiene products, canned food, and much more, all bound for Louisiana. Jaycee chapters all across Iowa contributed to this magnificent effort.

So many individual Iowans stood out as profiles in compassion during this difficult time. For example, Pastor Rod Bradley of the True Bible Baptist Church personally made three trips by car to pick up evacuees in Gonzales, LA. Wesley Jones traveled from Iowa to the gulf to help clear away debris. And school children in LeClaire, IA, helped evacuee children to adjust to their new school, and sold homemade bracelets to raise money for the evacuee families.

Mr. President, obviously, these are just snapshots. I cannot possibly name all the people from my State who gave generously of their time, talents, and energy to assist the victims of Katrina. Thousands of Iowans opened their hearts, their homes, and their pocketbooks. I simply want to take this time to thank them—the named and the unnamed for their amazing response to this tragedy. They have done Iowa proud, and I am deeply grateful to them for their service and sacrifice.

WASTEWATER TREATMENT WORKS SECURITY ACT

Mr. OBAMA. Mr. President, I rise today in support of the Wastewater Treatment Works Security Act of 2005. I am proud to be an original cosponsor of this bill.

When Timothy McVeigh drove a rental vehicle up to a Federal building in Oklahoma City, Americans began to look at trucks in a completely new way. So we learned to screen vehicles to safeguard against such a tragedy ever happening again.

On September 11, 2001, a thing as ordinary as an airplane became an instrument of destruction and terror, robbing innocent people of the rest of their lives. As a result, we have gotten pretty good at screening people and their luggage at airports, and at keeping planes out of protected air space.

While these changes are necessary and prudent, there is another part of the equation to consider: the act of terror not yet committed. We must look at the threats our security experts have identified and address these potential threats.

One such threat is a possible attack on our Nation’s wastewater treatment plants. Traditionally, wastewater treatment plants have stored chemicals that, if used properly, clean the water of harmful organisms. When most of these plants were built, we did not design them to ward against use as potential weapons of mayhem and destruction. Appropriately, we were only concerned about the environment, safety, and preventing accidents.

Since September 11, as security concerns have been identified in this sector, many of these facilities have taken steps on their own to switch to safer alternative treatments or to further secure chemicals and the facilities against deliberate acts of terrorism. But, such changes are expensive. Many of these facilities need assistance to upgrade security at the facility and to switch to these safer alternative forms of treatment.

The Wastewater Treatment Works Security Act of 2005 puts in place requirements to assess facilities’ vulnerability and provides much needed financial assistance to upgrade security and to switch to safer forms of chemical treatment. My only regret is that the bill does not pick up more of the cost of the assessments and upgrades. I believe the Federal Government needs to take on a larger share of funding these types of homeland security improvements.

This is a much needed bill, and I urge my colleagues to support it.

LEAKGATE AND THE INDICTMENT OF LEWIS LIBBY

Mr. HARKIN. Mr. President, 2 years ago, after the Washington Post first reported that ‘‘two senior White House officials’’ had exposed Valerie Plame Wilson’s identity as a covert operative of the Central Intelligence Agency, I repeatedly came to the Senate floor to call on President Bush to act quickly to identify the leakers.

After all, this was a potentially illegal act committed by ‘‘senior White House officials.’’ This should have outraged everyone at the White House. President Bush should have taken steps to identity the perpetrators forthwith.

Bear in mind that the number of ‘‘senior White House officials’’ with the appropriate security clearances and access to knowledge about Ms. Wilson’s identity could be counted on one hand—two hands at a maximum. If Mr. Bush had been serious about identifying the perpetrators, those 5 to 10 ‘‘senior White House officials’’ could have been immediately summoned to the Oval Office and questioned by the President. This matter would have been resolved literally within 24 hours.

But that did not happen. There was no outrage. There was no internal investigation. There was no angry President Bush demanding answers from his senior aides. Instead, we have had more than 2 years of concealment, coverup, and contempt.

Well, Special Counsel Patrick Fitzgerald has now broken that coverup wide open. Vice President DICK CHENEY’s top aide, Scooter Libby, has been indicted for lying and obstructing justice in order to conceal his role as one of the two leakers. ‘‘Official A,’’ the second leaker, is President Bush’s top aide, Karl Rove, according to multiple reports in the media, quoting senior White House sources.

But let's be clear, Mr. President, this is about more than Mr. Libby repeatedly lying about his role in leaking a CIA agent's identity; this is about the Bush administration hiding the fact that it manipulated and manufactured intelligence in order to justify the war in Iraq. This is about the Bush administration stopping at nothing to attack and discredit anyone who dared to question its efforts to ''fix'' the intelligence. This is about the United States of America being led to war under false pretenses.

Only one person in this enterprise, Mr. Libby, has been indicted so far—though Mr. Rove remains under investigation. But the issue here is not strictly: Who perpetrated a criminal offense? The issue is: Who else participated in the hardball political campaign to discredit and punish Ambassador Wilson—and who instigated that campaign?

According to Mr. Fitzgerald's indictment, Vice President CHENEY's office was the hub of a concerted effort to gather information about Ambassador Wilson and to counter the assertions made in his famous New York Times op-ed. Indeed, according to the indictment, it was none other than Vice President DICK CHENEY himself who first told Mr. Libby about Valerie Plame Wilson's identity as a CIA operative and wife of Ambassador Joe Wilson.

Again according to the indictment, on July 12, 2003, Mr. Libby flew with the Vice President on Air Force Two, and one of the issues discussed on board was how to deal with the news media. Just hours later, the indictment says, Mr. Libby told two reporters about Mrs. Wilson's status as a CIA agent.

So this gives rise to several obvious questions: What did Vice President CHENEY know, and when did he know it? Why did Mr. Libby lie, saying that he first learned about Mrs. Wilson's identity from reporters? Was he trying to conceal a broader effort, involving the Vice President, to go after Ambassador Wilson?

Vice President CHENEY owes a full explanation to the American people.

Bear in mind that it was Mr. CHENEY who was most aggressive in pushing the CIA to come up with intelligence to justify an invasion of Iraq. The CIA told him definitively that there was no meeting in Vienna between Iraqi agents and 9/11 terrorist Mohammed Atta, but Mr. CHENEY continued to assert in public that this meeting took place. Time and again, he exaggerated the case for Iraq's weapons of mass destruction, including his statement that Iraq had ''reconstituted nuclear weapons.'' It was the Vice President and his aides who took the lead in responding to those who challenged those and other claims by the administration.

By all accounts, Mr. Libby was a disciplined, cautious staff person the antithesis of a rogue operator. It is far-fetched to imagine that he was freelancing when he outed Mrs. Wilson's identity as a CIA agent.

So the American people need to hear directly from Vice President CHENEY: Did he discuss with Mr. Libby whether to tell reporters about Mrs. Wilson's identity? When the Vice President read in the media that Mr. Libby had claimed that reporters first told him about Mrs. Wilson's identity, what did he say to Mr. Libby, given the fact that it was he, the Vice President, who first told Mr. Libby about Mrs. Wilson? Why has the Vice President not condemned the leaks and lies by his top aide?

It is very clear why Mr. Libby lied about who told him about Mrs. Wilson's identity. It was to frustrate, sidetrack, and stall Mr. Fitzgerald's investigation until after the 2004 election. As Mr. Fitzgerald said in announcing his indictment, if Mr. Libby had not thrown sand in the eyes of the prosecutors, ''we would have been here in October 2004 instead of October 2005.'' So Mr. Libby's lies were not only about protecting his original source, Vice President CHENEY; they were also about delaying any indictments by Mr. Fitzgerald until after the election. They were about not allowing the election to become an ''accountability moment,'' which very well could have denied President Bush reelection.

At the same time, we need an accounting from President Bush. Karl Rove is the President's closest adviser. We now know from multiple accounts in the media, citing senior administration sources, that Mr. Rove was one of the two ''senior White House officials'' who leaked Mrs. Wilson's identity as a CIA agent to reporters. Mr. Rove is still under investigation, and may or may not face indictment. But whether or not he is actually indicted, his actions were unethical and unacceptable.

Two years ago, we heard testimony from Vincent Cannistrano, former Chief of Operations and Analysis at the CIA Counterterrorism Center, on the far-reaching damage caused by the disclosure of Mrs. Wilson's identify. He said: ''Twenty years of training and experience and millions of dollars were invested in this agent, Valerie Plame [Wilson]. . . . The consequences are much greater than Valerie Plame [Wilson's] job as a clandestine CIA employee. They include damage to the lives and livelihoods of many foreign nationals with whom she was connected, and it has destroyed a clandestine cover mechanism that may have been used to protect other CIA non-official cover officers.''

Early on, President Bush stated that he would fire any White House official found to have been involved in leaking Mrs. Wilson's identity as a CIA agent. To this day, on the White House Web site, you can read the transcript of a press conference on June 10, 2004. A reporter asked: ''Mr. President, do you stand by your pledge to fire anyone found to have [been involved in leaking the CIA agent's name]?'' The President responded with an unambiguous ''yes.''

Today, the President needs to come clean about Mr. Rove's role. He needs to publicly acknowledge, as senior administration officials have already done anonymously, that Mr. Rove was the second leaker. And then he needs to make good on his pledge to fire him.

I urge President Bush—for the good of the country and for the good of his administration—to follow through on his public pledge. The President's original instincts were exactly right: It should be intolerable to allow someone who leaked a CIA agent's identity to stay on in the White House.

It is also deeply disturbing that Mr. Rove continues to hold a top-secret security clearance. Like all holders of a top-secret clearance, Mr. Rove signed a ''Classified Information Nondisclosure Agreement'' acknowledging that ''unauthorized disclosure, unauthorized retention or negligent handling of classified information by me could cause damage or irreparable injury to the United States.'' The signer of the form states: ''I have been advised that any breach of this agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or the termination of my employment . . .''

Before signing the nondisclosure agreement, an employee is given training and a booklet explaining the nondisclosure rules, which include prohibitions against providing classified information—or even confirming it—to reporters.

The facts are plain: Mr. Rove violated the terms of his security clearance. If the White House disputes this, then it owes the American people a formal Justice Department investigation of Mr. Rove's actions. If it is determined that he violated the terms of his Nondisclosure Agreement, he should be stripped of his security clearance immediately. This is an issue entirely separate from Mr. Fitzgerald's ongoing investigation, but it is no less important.

I am sure that President Bush is concerned about the damage to his administration from the leaking of Mrs. Wilson's covert identity. A week ago, the Washington Post reported the results of its most recent poll. It found that by a ratio of 3 to 1—46 percent to 15 percent—Americans say that the level of honesty and ethics in the Government has declined since Mr. Bush took office.

I believe it is time for Mr. Rove to go. It is time for President Bush to restore honor and integrity to the White House and to demand the highest ethical standards from his staff.

President Bush still has more than 3 years in office. For our country to be successful, he must be successful. To that end, I urge the President to set a new tone and to chart a new a new course. He should begin by asking Mr. Rove to leave and by asking Vice President CHENEY to give a full and honest accounting of his role in this matter.

ADDITIONAL STATEMENTS

TRIBUTE TO HARDY L. BROWN

• Mrs. BOXER. Mr. President, I rise today to recognize the lifetime of achievement of Hardy L. Brown. His story is a true American success story and he stands today as a leader in his community.

Hardy L. Brown was born in Trenton, NC, in 1942, the son of a sharecropper. After graduating from high school, Hardy Brown relocated to California where he found work as a laborer for Kaiser Steel in Fontana. He did not remain a laborer for long, and, in time, he took a management position with Kaiser Steel. During this same time, he also became actively involved with many community projects, always with a focus on community service.

Hardy Brown was elected to the San Bernardino City Unified School District's Board in 1983 and served for 12 years. He served as president of the board and was the first African-American male to hold this position. During his tenure as board president, he was responsible for the re-opening of and the changing of names of two schools on the west side of San Bernardino.

The banner of The Black Voice News, a weekly news publication focusing on issues surrounding the African American community, claims, ''The Black Voice News, serving the Inland Empire for 30 years.'' Cheryl and Hardy have, in fact, owned and operated the newspaper and served the Inland Empire for 28 of those successful years. He has also served on the board of the West Coast Black Publishers Association and has been active in the National Newspaper Publishers Association, which named him Publisher of the Year in 2000. He also has served as president of the California Black Media Association, an advocacy alliance for Black-owned newspapers, magazines, and radio stations.

Hardy L. Brown has had a lasting impact on southern California both through his public service and through his weekly publications. His advice and counsel are often sought by leaders in education, and by civic leaders and by Members of Congress. In fact, Hardy served on the staff of the late Congressman George E. Brown, Jr. in the Inland Empire. He and his wife, Cheryl, provide an important and reliable progressive voice and insight to the community. I applaud Hardy L. Brown for his lifetime of public service and community leadership and I am pleased to honor him as he celebrates his 63rd birthday. Please join me in honoring a great American and a true community hero, Hardy L. Brown.•

TRIBUTE TO ALBERT CASEY

• Mrs. HUTCHISON. Mr. President, one of my longtime friends, Patricia Patterson, and I were recently discussing the life and service of a great American, and I wanted to take a moment and bring to the attention of my colleagues this American success story.

Al Casey passed away on July 10, 2004, after a lifetime of contributing strong leadership and a gregarious disposition to numerous companies, communities, and organizations from across the country.

After putting himself through Harvard, Al enlisted in the Army during World War II. Following his military service, he returned to Harvard business school, earning a graduate degree in finance. Al loved Harvard, and his friendships there opened doors and enriched his life throughout his long career.

Al's first job was in New York for Railway Express. He and Ellie, his wife of more than 40 years, then moved to San Francisco with the Southern Pacific Railroad. Al later worked as President of the Times Mirror Company and the Los Angeles Times for 8 years, before moving to possibly his most visible corporate assignment—CEO of American Airlines. His philosophy, ''you don't have to be mean to be tough,'' carried him to success in most of his professional endeavors, especially with American, where Al provided aggressive leadership. When he came to American Airlines, he had already established a reputation of high ethical behavior. This, combined with his ability to laugh at himself, secured for him the cooperation and loyalty of his employees.

Following his retirement from American Airlines, Al began a relationship with SMU's Cox Business School as a faculty member. His teaching career was interrupted to rescue First International Bankshares as it emerged from bankruptcy. Later, he served as Postmaster General of the United States under President Reagan. Al enjoyed this tour immensely, even signing letters to close friends as ''Big Stamp.'' He returned to teaching, only to be tapped in 1991 by President George H.W. Bush and Alan Greenspan, Chairman of the Federal Reserve Bank, to pilot the Resolution Trust Corporation—which was charged with disposing of financial and real estate assets left behind in the wake of failed savings and loan companies in the 1980s. It was a massive undertaking that no one thought could be done. Al worked for 18 months and was able to lead the RTC in disposing of almost all of the assets by the time the Clinton administration took office.

Al had a positive outlook on life and genuinely desired to know about the triumphs and tribulations in the lives of friends and coworkers. He supported countless community and civic organizations and was committed to improving the cities and neighborhoods where he lived and worked.

The effects of his steady guidance and endless enthusiasm for life have been felt in major corporations, in professional associations, in government organizations, and in the personal lives of many Americans. Albert Casey coined ''Casey's Law,'' which holds that ''if anything could go right, it should.'' I was honored to know Al, and I thank you, Mr. President, for the opportunity to commemorate such a fine man. He is certainly missed and fondly remembered.•

TRIBUTE TO MICHAEL O. HILL

• Mr. SARBANES. Mr. President, I want to pay tribute today to Michael O. Hill, superintendent of Assateague Island National Seashore. Mike is retiring after a long and distinguished career in the National Park Service, and I want to thank him for his service to our Nation and especially for the outstanding job he did in managing and enhancing Assateague Island National Seashore since coming to Maryland in 2000.

Throughout his 33-year career with the National Park Service, Mike Hill has distinguished himself through his commitment and dedication to managing and protecting some of our Nation's most precious treasures. Beginning as a seasonal employee at Sequoia National Park in 1973, Mike's career quickly took him through a variety of increasingly challenging posts, from his first permanent position as a horse patrol ranger at Petrified Forest National Park to management positions in parks all over our country including Channel Islands National Park, Shenandoah National Park, VA, and Biscayne National Park, FL. In 1990, he was selected for the 2-year Bevinetto congressional fellowship program, where he worked with the National Park Service and Congress to better manage our national parks. In 1993, he became superintendent of Petersburg National Battlefield, and in 2000 he was selected for his present position at Assateague Island National Seashore.

Over the past 5 years, I have had the opportunity and privilege to work closely with Mike on several initiatives to protect the natural resources at Assateague and to enhance visitors' experiences at the seashore. I know firsthand the great leadership and expertise he brought not only to these initiatives, but equally important, to supporting and encouraging one of the finest staffs of park professionals in the country—at a time when all our parks are operating with only two-thirds of the needed funding and personnel. Under Mike's direction, the integrity of the northern 7 miles of the National Seashore has been restored after decades of unnatural erosion, plans have been advanced to develop a new barrier island visitors center to accommodate the increasing number of visitors to the park, and partnerships with the University of Maryland Eastern Shore, the Maryland Coastal Bay Program, and the State and local governments have been strengthened.

Mike's dedication to the stewardship of the National Park System has earned him the respect and admiration of his colleagues, park visitors, and community residents, alike. His passion for Assateague was evident even in his voicemail: ''I can't take your call right now. With any luck, I'm out on the Island.'' It is due to that commitment that visitors to Assateague and other units of the National Park System will benefit from his labors for years to come. I want to extend my personal congratulations and thanks for his many years of hard work and dedication to the principal conservation mission of the National Park Service and join with his friends and coworkers in wishing him and his family well in the years to come.

It is my firm conviction that public service is one of the most honorable callings, one that demands the very best, most dedicated efforts of those who have the opportunity to serve their fellow citizens and country. Throughout his career, Mike Hill has exemplified a steadfast commitment to meeting his demand.●

COMMENDING SMOKEY HOLLER TREE FARM

● Mrs. DOLE. Mr. President, I rise today to congratulate Earl, Betsy, Meg, and Buddy Deal of Smokey Holler Tree Farm in Laurel Springs, NC, for winning the National Christmas Tree Association's 2005 National Christmas Tree Contest. As Grand Champions, the Deal family has the distinguished honor of providing this year's official White House Christmas tree. This is a storied tradition that began in 1966, and I applaud the Deal family for producing North Carolina's ninth official White House Christmas tree. After winning at the State level, the Deal family's prized 18½-foot Fraser fir was selected out of 22 other entries at the national competition. The tree was then approved by White House Chief Usher Gary Walters and Grounds Foreman Mike Lawn to be the Blue Room Christmas tree. The Deal family will have the honor of presenting the prized Blue Room tree to First Lady Laura Bush in a special ceremony at the White House on November 28, 2005. As an added bonus, the Deal family will provide a tree for the Oval Office and another tree for the private residence at the White House.

This year's official White House Christmas tree is a fine example of the exceptional quality of Christmas trees that we have in North Carolina. North Carolina is one of the top producers of Christmas trees, providing roughly one out of every five Christmas trees in the United States, thereby contributing over $100 million annually to North Carolina's economy. But this success does not come easily; it takes several years of meticulous care and attention to raise a Christmas tree. An average 7-foot tree is about 10 years old, and throughout that time the grower diligently shapes, grooms, and fertilizes the tree several times per year. Not many people realize the years of hard work and sacrifice that go into raising a Christmas tree, and our growers are to be commended for their continuous success.

North Carolina has a rich history in Christmas trees, and year after year, many American families enjoy the warmth and beauty of these North Carolina trees that are a symbol of the holiday season. I am proud of the hard work exhibited by our Christmas tree growers in North Carolina, and I am proud that there will be another North Carolina Christmas tree in the White House this year.●

GUIDEONE INSURANCE HONORED WITH ''PRINCIPAL 10 BEST COMPANIES'' AWARD

● Mr. HARKIN. Mr. President, each year the Principal Financial Group shines a spotlight on companies across the United States that excel in providing for their employees' financial future, including a well-funded retirement. Selected by a blue-ribbon panel, these exemplary companies are honored with the Principal 10 Best Companies Award.

This year, 1 of the 10 recipients of this prestigious award is GuideOne Insurance of West Des Moines, IA. GuideOne, which was founded in 1947, is one of the Nation's largest insurers of churches. It also insures faith-based private schools and colleges as well as not-for-profit senior living communities.

At a time when so many companies across the United States are cutting back—or completely eliminating—their employer-provided retirement benefits, GuideOne is charting a different course. The firm's executives believe that providing for their employees' financial future is critical to success in recruiting, retaining, and motivating an excellent staff.

The 807 employees at GuideOne enjoy a generous benefit package, including a defined benefit pension plan; 100 percent employer-paid premiums for disability insurance; a 401(k) plan with 100 percent employer match up to 3 percent of pay; and health insurance that is 76 percent employer-paid for employees, and 68 percent employer-paid for dependents. Nearly 85 percent of employees participate in the company's 401(k) plan, which is remarkably high by national standards.

To its great credit, the company is also concerned about the health of its employees. GuideOne has a robust wellness program that, among other things, reimburses employees $200 for fitness-related expenses.

Mr. President, it is clear to me that GuideOne understands what too many companies in the United States have forgotten. GuideOne understands that its employees truly are its greatest asset and competitive strength, and that a generous benefit package is the way to attract and retain outstanding talent, while keeping morale and productivity high.

So I congratulate GuideOne for the richly deserved honor of receiving the Principal 10 Best Companies Award, and I salute all the folks at GuideOne for setting an example of enlightened corporate stewardship. They are proving that it is possible to do well and do good at the same time. And I couldn't be more proud that this excellent company calls Iowa home.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

DRAFT OF PROPOSED LEGISLATION ENTITLED ''UNITED STATES-BAHRAIN FREE TRADE AGREEMENT IMPLEMENTATION ACT''—PM 32

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

I am pleased to transmit legislation and supporting documents to implement the United States-Bahrain Free Trade Agreement (the ''Agreement''). This Agreement enhances our bilateral relationship with a strategic friend and ally in the Middle East region and will promote economic growth and prosperity in both nations.

In negotiating this Agreement, my Administration was guided by the objectives set out in the Trade Act of 2002. The Agreement reflects my Administration's commitment to opening markets and expanding opportunities for American workers, farmers, ranchers, and businesses. The Agreement will open Bahrain's market for U.S. manufactured goods, agricultural products, and services. As soon as it enters into force, the Agreement will eliminate tariffs on all manufactured goods that the United States sells to Bahrain and immediately remove Bahrain's import duties on over 80 percent of U.S. agricultural products. The Agreement is also one of the most comprehensive ever negotiated to reduce barriers to trade in services and will create new opportunities for U.S. services firms.

The Agreement contains procedures that will facilitate cooperation between the United States and Bahrain on environmental and labor matters. The labor chapter of the Agreement reinforces Bahrain's recent legislative actions to expand democracy and improve the protection of worker rights, including trade union rights. Provisions in the Agreement requiring effective enforcement of environmental laws will contribute to high levels of environmental protection.

The approval of this Agreement will be another significant step towards creating a Middle East Free Trade Area by 2013. This Agreement offers the United States yet another opportunity to encourage economic reform in a moderate Muslim nation as we have done through our free trade agreements with Jordan and Morocco. Leaders in Bahrain are supporting the pursuit of social and economic reforms in the region, encouraging foreign investment connected to broad-based development, and providing better protection for women and workers. It is strongly in our national interest to embrace and encourage these reforms, and passing this legislation is a crucial step toward that end.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 16, 2005*.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 2:20 p.m., a message from the House of Representatives, delivered by Ms. Brandon, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1713. An act to make amendments to the Iran Nonproliferation Act of 2000 related to International Space Station Payments, and for other purposes.

S. 1894. An act to amend part E of title IV of the Social Security Act to provide for the making of foster care maintenance payments to private for-profit agencies.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 2:25 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 318. An act to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes.

H.R. 323. An act to redesignate the Ellis Island Library on the third floor of the Ellis Island Immigration Museuni, located on Ellis Island in New York Harbor, as the ''Bob Hope Memorial Library''.

H.R. 326. An act to amend the Yuma Crossing National Heritage Area Act of 2000 to adjust the boundary of the Yuma Crossing National Heritage Area and to extend the authority of the Secretary of the Interior to provide assistance under that Act.

H.R. 856. An act to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes.

H.R. 1564. An act to authorize the Secretary of the Interior to convey certain buildings and lands of the Yakima Project, Washington, to the Yakima-Tieton Irrigation District.

H.R. 1972. An act to direct the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of including in the National Park System certain sites in Williamson County, Tennessee, relating to the Battle of Franklin.

H.R. 3507. An act to transfer certain land in Riverside County, California, and San Diego County, California, from the Bureau of Land Management to the United States to be held in trust for the Pechanga Band of Luiseno Mission Indians, and for other purposes.

H.R. 3721. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to allow certain commercial vehicles to continue to use Route 209 within Delaware Water Gap National Recreation Area and to allow the National Park Service to continue to collect fees from those vehicles, and for other purposes.

H.R. 3975. An act to ease the provision of services to individuals affected by Hurricanes Katrina and Rita, and for other purposes.

H.R. 3981. An act to authorize the Secretary of Agriculture to carry out certain land exchanges involving small parcels of National Forest System land in the Tahoe National Forest in the State of California, and for other purposes.

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. 288. Concurrent resolution recognizing the 30th anniversary of the enactment of the Education for All Handicapped Children Act of 1975 and reaffirming support for the Individuals with Disabilities Education Act so that all children with disabilities have access to a free appropriate public education in the least restrictive environment.

At 6:08 p.m., a message from the House of Representatives, delivered by Ms. Brandon, 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. 4326. An act to authorize the Secretary of the Navy to enter into a contract for the nuclear refueling and complex overhaul of the U.S.S. Carl Vinson (CVN–70).

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 318. An act to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 323. An act to redesignate the Ellis Island Library on the third floor of the Ellis Island Immigration Museum, located on Ellis Island in New York Harbor, as the ''Bob Hope Memorial Library''; to the Committee on Energy and Natural Resources.

H.R. 326. An act to amend the Yuma Crossing National Heritage Area Act of 2000 to adjust the boundary of the Yuma Crossing National Heritage Area and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 856. An act to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

H.R. 1564. An act to authorize the Secretary of the Interior to convey certain buildings and lands of the Yakima Project, Washington, to the Yakima-Tieton Irrigation District; to the Committee on Energy and Natural Resources.

H.R. 3507. An act to transfer certain land in Riverside County, California, and San Diego County, California, from the Bureau of Land Management to the United States to be held in trust for the Pechanga Band of Luiseno Mission Indians, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3721. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to allow certain commercial vehicles to continue to use Route 209 within Delaware Water Gap National Recreation Area and to allow the National Park Service to continue to collect fees from those vehicles, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3975. An act to ease the provision of services to individuals affected by Hurricanes Katrina and Rita, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

H.R. 3981. An act to authorize the Secretary of Agriculture to carry out certain land exchanges involving small parcels of National Forest System land in the Tahoe National Forest in the State of California, 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. 288. Concurrent resolution recognizing the 30th anniversary of the enactment of the Education for All Handicapped Children Act of 1975 and reaffirming support for the Individuals with Disabilities Education Act so that all children with disabilities have access to a free appropriate public education in the least restrictive environment; to the Committee on Health, Education, Labor, and Pensions.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2008. A bill to improve cargo security, and for other purposes.

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1972. An act to direct the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of including in the National Park System certain sites in Williamson County, Tennessee, relating to the Battle of Franklin.

MEASURES HELD AT DESK

The following measure was discharged from committee, passed without amendment, and was ordered held at the desk, by unanimous consent:

S. 695. A bill to suspend temporarily new shipper bonding privileges.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4652. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; Metropolitan Washington D.C. 1-Hour Ozone Attainment Plan, Lifting of Earlier Rules Resulting in Removal of Sanctions and Federal Implementation Clocks'' (FRL7997–5) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4653. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Emissions From Hospital/Medical/Infectious Waste Incinerator Units; Correction'' (FRL7997-6) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4654. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Delaware County to Attainment of the 8-Hour Ozone Standard'' (FRL7997–8) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4655. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures'' (FRL7997–3) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4656. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Control of Air Pollution from New Motor Vehicles; Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions; and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs'' (FRL7996–9) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4657. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing: Reconsideration'' (FRL7997–9) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4658. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as they Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (FRL7996–8) received on November 14, 2005; to the Committee on Environment and Public Works.

EC–4659. A communication from the Secretary, Department of Agriculture, transmitting, a report of draft legislation which would provide for the Secretary of Agriculture to meet certain reporting requirements relating to strategic planning; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4660. A communication from the Acting Under Secretary, Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report that funding for the State of Minnesota as a result of the emergency conditions resulting from the influx of evacuees from areas struck by Hurricane Katrina beginning on August 29, 2005, and continuing, has exceeded $5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC–4661. A communication from the Director, Office of Legislative Affairs, Federal Deposit Insurance Corporation (FDIC), transmitting, pursuant to law, the report of a rule entitled ''Deposit Insurance Coverage; Accounts in Qualified Tuition Savings Programs Under Section 529 of the Internal Revenue Code'' (RIN3064–AC90) received on November 15, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4662. A communication from the Secretary, Commission of Fine Arts, transmitting, pursuant to law, a report on Fiscal Year 2005 Competitive Sourcing Efforts and the Commission's Fiscal Year 2005 Inventory of Commercial and Inherently Governmental Activities Report, dated May 24, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–4663. A communication from the Independent Counsel, Office of Independent Council, transmitting, pursuant to law, the Office's Annual Report on Audit and Investigative Activities; to the Committee on Homeland Security and Governmental Affairs.

EC–4664. A communication from the Director of Selective Service, transmitting, pursuant to law, a report in accordance with the Federal Managers' Integrity Act; to the Committee on Homeland Security and Governmental Affairs.

EC–4665. A communication from the Chairman, Occupational Safety and Health Review Commission, transmitting, pursuant to law, a report on the Agency's compliance with the Inspector General Act of 1978 and the Federal Managers' Financial Integrity Act for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–4666. A communication from the Staff Director, Commission on Civil Rights, transmitting, pursuant to law, the Federal Managers' Financial Integrity Act Report for fiscal year 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–4667. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Department of Defense Human Resources Management and Labor Relations Systems'' (RIN3206–AK76/0790–AH82) received on November 15, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–4668. A communication from the Acting Deputy Secretary of Defense, transmitting, pursuant to law, the Department's Fiscal Year 2005 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–4669. A communication from the Commissioner, Social Security Administration, transmitting, pursuant to law, the Administration's Performance and Accountability Report for Fiscal Year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–4670. A communication from the Attorney General, Department of Justice, transmitting, pursuant to law, the Department's Fiscal Year 2005 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–4671. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2005 Performance and Accountability Report; to the Committee on Homeland Security and Governmental Affairs.

EC–4672. A communication from the Director, U.S. Trade and Development Agency, transmitting, pursuant to law, the Agency's Performance and Accountability Reports including audited financial statements for fiscal year 2005; to the Committee on Homeland Security and Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CRAIG, from the Committee on Veterans' Affairs, without amendment:

S. 716. A bill to amend title 38, United States Code, to enhance services provided by vet centers, to clarify and improve the provision of bereavement counseling by the Department of Veterans Affairs, and for other purposes (Rept. No. 109–180).

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 363. A bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements, and for other purposes (Rept. No. 109–181).

By Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

S. 467. A bill to extend the applicability of the Terrorism Risk Insurance Act of 2002.

By Mr. GRASSLEY, from the Committee on Finance, without amendment:

S. 2020. An original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

Army nominations beginning with Brigadier General Robert P. French and ending with Colonel Terry L. Wiley, which nominations were received by the Senate and appeared in the Congressional Record on November 4, 2005.

Air Force nominations beginning with Brigadier General Larita A. Aragon and ending with Colonel Alex D. Roberts, which nominations were received by the Senate and appeared in the Congressional Record on November 4, 2005.

Air Force nomination of Colonel Steven R. Doohen to be Brigadier General.

Air Force nomination of Colonel Daniel R. Eagle to be Brigadier General.

Army nomination of Lt. Gen. David D. McKiernan to be General.

Army nomination of Maj. Gen. Peter W. Chiarelli to be Lieutenant General.

Army nomination of Maj. Gen. Keith W. Dayton to be Lieutenant General.

Army nomination of Maj. Gen. John R. Wood to be Lieutenant General.

Army nomination of Brig. Gen. William T. Nesbitt to be Major General.

Army nomination of Col. Guy L. Sands-Pingot to be Brigadier General.

Army nomination of Col. Mitchell L. Brown to be Brigadier General.

Navy nomination of Rear Adm. John C. Harvey, Jr. to be Vice Admiral.

Navy nomination of Capt. Frank Thorp IV to be Rear Admiral (lower half).

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Brian F. Abell and ending with Ray A. Zuniga, which nominations were received by the Senate and appeared in the Congressional Record on May 26, 2005.

Air Force nomination of Jon R. Stovall to be Colonel.

Air Force nomination of Kenneth W. Bullock to be Lieutenant Colonel.

Air Force nominations beginning with Randall S. Lecheminant and ending with Scott H. R. Lee, which nominations were received by the Senate and appeared in the Congressional Record on November 10, 2005.

Air Force nomination of Rena A. Nicholas to be Major.

Air Force nomination of Jeffrey S. Brittig to be Major.

Air Force nomination of Albert J. Bainger to be Major.

Army nominations beginning with Robinette J. Amaker and ending with Josef H. Moore, which nominations were received by the Senate and appeared in the Congressional Record on October 25, 2005.

Army nominations beginning with Terry K. Besch and ending with John R. Taber, which nominations were received by the Senate and appeared in the Congressional Record on October 25, 2005.

Army nominations beginning with Kimberly K. Armstrong and ending with Kelly A. Wolgast, which nominations were received by the Senate and appeared in the Congressional Record on October 25 2005.

Army nominations beginning with Randall G. Anderson and ending with John H. Trakowski, Jr., which nominations were received by the Senate and appeared in the Congressional Record on October 25, 2005.

Army nominations beginning with Robert Dempster and ending with Errol Lader, which nominations were received by the Senate and appeared in the Congressional Record on October 26, 2005.

Army nominations beginning with Mimms Mabee and ending with Jimmie Perez, which nominations were received by the Senate and appeared in the Congressional Record on October 26, 2005.

Army nominations beginning with Michelle Beach and ending with Helen Laquay, which nominations were received by the Senate and appeared in the Congressional Record on October 26, 2005.

Army nominations beginning with Gregory Brewer and ending with Terrell Morrow, which nominations were received by the Senate and appeared in the Congressional Record on October 26, 2005.

Army nominations beginning with Walter J. Austin and ending with Keith C. Smith, which nominations were received by the Senate and appeared in the Congressional Record on November 4, 2005.

Army nomination of Jack N. Washburne to be Colonel.

Army nominations beginning with Barry J. Bernstein and ending with Juan M. Vera, which nominations were received by the Senate and appeared in the Congressional Record on November 10, 2005.

Army nominations beginning with Melvin S. Hogan and ending with Joseph M. Jackson, which nominations were received by the Senate and appeared in the Congressional Record on November 10, 2005.

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Ben S. Bernanke, of New Jersey, to be a Member of the Board of Governors of the Federal Reserve System for a term of fourteen years from February 1, 2006.

*Ben S. Bernanke, of New Jersey, to be Chairman of the Board of Governors of the Federal Reserve System for a term of four years.

By Mr. DOMENICI for the Committee on Energy and Natural Resources.

*Jeffrey D. Jarrett, of Pennsylvania, to be an Assistant Secretary of Energy (Fossil Energy).

*Edward F. Sproat III, of Pennsylvania, to be Director of the Office of Civilian Radioactive Waste Management, Department of Energy.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

Convention Concerning Migratory Fish Stock in the Pacific Ocean (Treaty Doc. 109–1) (Ex. Rept. 109–8).

Text of the resolution of ratification as reported by the Committee on Foreign Relations:

Resolved (two-thirds of the Senators present concurring therein),

The Senate advises and consents to the ratification of the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes, adopted at Honolulu on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and signed by the United States on that date (Treaty Doc. 109–1).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRASSLEY (for himself and Mr. SESSIONS):

S. 2016. A bill to amend chapter 3 of title 28, United States Code, to provide for 11 circuit judges on the United States Court of Appeals for the District of Columbia Circuit; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself and Ms. SNOWE):

S. 2017. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, and administrative settlement offers, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHNSON (for himself, Mr. CONRAD, and Mr. DORGAN):

S. 2018. A bill to amend the Federal Meat Inspection Act to provide that a quality grade label issued by the Secretary of Agriculture for beef and lamb may not be used for imported beef or imported lamb; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH (for himself and Mr. BAUCUS):

S. 2019. A bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GRASSLEY:

S. 2020. An original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; from the Committee on Finance; placed on the calendar.

By Mr. CHAMBLISS:

S. 2021. A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Office of National Veterans Sports Programs and Special Events; to the Committee on Veterans' Affairs.

By Mr. COLEMAN (for himself and Mr. BINGAMAN):

S. 2022. A bill to amend title XVIII of the Social Security Act to provide for coverage of remote patient management services for chronic health care conditions under the Medicare program; to the Committee on Finance.

By Mr. INHOFE (for himself and Mr. THUNE):

S. 2023. A bill to amend the Oil Pollution Act of 1990 to improve that Act, and for other purposes; to the Committee on Environment and Public Works.

By Ms. MURKOWSKI:

S. 2024. A bill to raise the minimum State allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BAYH (for himself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. COLEMAN, Mr. GRAHAM, Mr. SALAZAR, Mr. SESSIONS, Mr. NELSON of Florida, Mr. LUGAR, and Mr. OBAMA):

S. 2025. A bill to promote the national security and stability of the United States economy by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mr. DORGAN, and Mr. DAYTON):

S. 2026. A bill to amend title XVIII of the Social Security Act to require that a prescription drug plan or an MA–PD plan that has an initial coverage limit obtain a signed certification prior to enrolling benficiaries under the plan under part D of such title; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 2027. A bill to implement the United States-Bahrain Free Trade Agreement; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BURNS (for himself, Mr. LEAHY, Mr. INOUYE, Mr. SMITH, Mr.

STEVENS, Mr. SUNUNU, Mr. NELSON of Florida, Mrs. HUTCHISON, Mr. INHOFE, Mr. ALLEN, and Mr. CRAIG):

S. Res. 317. A resolution expressing the sense of the Senate regarding oversight of the Internet Corporation for Assigned Names and Numbers; considered and agreed to.

ADDITIONAL COSPONSORS

S. 1112

At the request of Mr. BAUCUS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1139

At the request of Mr. SANTORUM, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1179

At the request of Mr. AKAKA, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1179, a bill to amend title XVIII of the Social Security Act to ensure that benefits under part D of such title have no impact on benefits under other Federal programs.

S. 1215

At the request of Mr. GREGG, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1215, a bill to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.

S. 1496

At the request of Mr. CRAPO, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 1496, a bill to direct the Secretary of the Interior to conduct a pilot program under which up to 15 States may issue electronic Federal migratory bird hunting stamps.

S. 1504

At the request of Mr. ENSIGN, the names of the Senator from Florida (Mr. MARTINEZ) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. 1504, a bill to establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services.

S. 1791

At the request of Mr. SMITH, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Georgia (Mr. ISAKSON), the Senator from North Carolina (Mr. BURR) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1841

At the request of Mr. NELSON of Florida, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1930

At the request of Mr. REID, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1930, a bill to expand the research, prevention, and awareness activities of the National Institute of Diabetes and Digestive and Kidney Diseases and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 2013

At the request of Mr. STEVENS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2013, a bill to amend the Marine Mammal Protection Act of 1972 to implement the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population.

S. CON. RES. 60

At the request of Mr. TALENT, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Con. Res. 60, a concurrent resolution designating the Negro Leagues Baseball Museum in Kansas City, Missouri, as America's National Negro Leagues Baseball Museum.

S. CON. RES. 62

At the request of Mr. MCCONNELL, the names of the Senator from Illinois (Mr. OBAMA), the Senator from North Carolina (Mr. BURR) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. Con. Res. 62, a concurrent resolution directing the Joint Committee on the Library to procure a statue of Rosa Parks for placement in the Capitol.

At the request of Mr. STEVENS, his name was added as a cosponsor of S. Con. Res. 62, supra.

At the request of Mr. DODD, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Con. Res. 62, supra.

At the request of Mr. ROBERTS, his name was added as a cosponsor of S. Con. Res. 62, supra.

S. RES. 219

At the request of Mrs. FEINSTEIN, the names of the Senator from New York (Mr. SCHUMER), the Senator from Maryland (Ms. MIKULSKI), the Senator from Hawaii (Mr. AKAKA), the Senator from Washington (Ms. CANTWELL) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 219, a resolution designating March 8, 2006, as ''Endangered Species Day'', and encouraging the people of the United States to become educated about, and aware of, threats to species, success stories in species recovery, and the opportunity to promote species conservation worldwide.

S. RES. 316

At the request of Mr. COLEMAN, the names of the Senator from Utah (Mr. BENNETT), the Senator from Florida (Mr. NELSON) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. Res. 316, a resolution expressing the sense of the Senate that the United Nations and other international organizations should not be allowed to exercise control over the Internet.

AMENDMENT NO. 2574

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 2574 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself and Mr. SESSIONS):

S. 2016. A bill to amend chapter 3 of title 28, United States Code, to provide for 11 circuit judges on the United States Court of Appeals for the District of Columbia Circuit; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2016

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

SECTION 1. JUDGES ON THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

(a) IN GENERAL.—The table under section 44(a) of title 28, United States Code, is amended by striking the item relating to the District of Columbia and inserting the following:

''District of Columbia .... 11''.

(b) EXISTING VACANCY NOT FILLED.—In order to comply with the amendment made under subsection (a), 1 of the vacancies of circuit judges on the United States Court of Appeals for the District of Columbia Circuit which existed on the date preceding the date of the enactment of this Act, shall not be filled.

By Mr. FEINGOLD (for himself and Ms. SNOWE):

S. 2017. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, and administrative settlement offers, and for other purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I plan to introduce the Equal Access to Justice Reform Act of 2005.

This legislation contains adjustments to the Equal Access to Justice

Act (EAJA) that will streamline and improve the process of awarding attorneys' fees to private parties who prevail in litigation against the Federal Government. This is the fifth Congress in which I have introduced EAJA reform. I believe this reform is an important step toward reducing the burden of defending government litigation for many individuals and small businesses.

I am very pleased to be joined in introducing this legislation this year by my friend from Maine, Senator OLYMPIA SNOWE, who chairs the Small Business Committee. We hope that by working together on a bipartisan basis, we will increase the chances that this important project will become law.

The legislation we are proposing today deals directly with a problem that affects small businesses and individual Americans across this country who face legal battles with the Federal Government. Even if they win in court, they may lose financially because they incur the great expense of paying their attorneys.

It is important to understand what the Equal Access to Justice Act is, and why it exists. The premise of this statute is very simple. EAJA seeks to level the playing field for individuals and small businesses that face the United States government in litigation. It establishes guidelines for the award of attorneys' fees when the individual or small business prevails in a case brought by the government. Quite simply, EAJA acknowledges that the resources available to the Federal Government in a legal dispute far outweigh those available to most Americans. This disparity is lessened by requiring the government, in certain instances, to pay the attorneys' fees of successful individual and small-business parties. By giving successful parties the right to seek attorneys' fees from the United States, EAJA seeks to prevent individuals and small business owners from having to risk their family savings or their companies' financial well-being to seek justice in court.

My interest in this issue predates my election to the Senate. It arises from my experience as both a private attorney and a Member of the State Senate in my home State of Wisconsin. While in private practice, I became aware of how the ability to recoup attorneys' fees is a significant factor, and often one of the first considered, when parties decide whether to defend a case. Upon entering the Wisconsin State Senate, I authored legislation modeled on the Federal law, which had been championed by one of my predecessors in this body from Wisconsin, Senator Gaylord Nelson. Today, Wisconsin statutes contain provisions similar to the federal EAJA statute.

It seemed to me then, as it does now, that we should do all that we can to help ease the financial burdens on people who need to have their claims reviewed and decided by impartial decision makers. The bill Senator SNOWE and I are introducing today does a number of things to make EAJA more effective for individuals and small business owners across this country.

First, this legislation eliminates the restrictive provision in current law that prevents successful parties from collecting attorneys' fees unless they can show the government's position was ''not substantially justified.'' I believe that this high threshold for obtaining attorneys' fees is unfair. If an individual or small business battles the Federal Government in an adversarial proceeding and prevails, the government should pay the fees incurred. Imagine a small business that spends time and money fighting the government and wins, only to find out that it must undertake the additional step of litigating the justification of government's litigation position just to recover attorneys' fees. For the government, with its vast resources, this second litigation over fees poses little difficulty, but for the small business or individual, it may simply not be financially feasible.

This additional step presents more than a financial burden on the individual or small business litigant. A 1992 study also reveals that it is unnecessary and a waste of government resources. University of Virginia Professor Harold Krent reviewed EAJA cases in 1989 and 1990 and released a study on behalf of the Administrative Conference of the United States. Professor Krent found that only a small percentage of EAJA awards were denied because of the substantial justification defense. While it is impossible to determine the exact cost of litigating the issue of substantial justification, Professor Krent found that the money saved by the government was not enough to justify the cost of the additional litigation. In short, eliminating this often-burdensome second step is a cost-effective step that will streamline recovery under EAJA and may very well save the government money in the long run.

A second improvement this bill makes to EAJA are modifications to the definition of a small business. Small businesses are currently defined for purposes of EAJA as businesses with a net worth of less than $7 million. We update that number to $10 million and also provide for an inflation adjustment every five years based on the Producer Price Index. This provision will ensure that EAJA continues to serve the small businesses it is intended to protect.

Another part of this legislation that will streamline and improve EAJA is a provision designed to encourage settlement and avoid costly and protracted litigation. Under the bill, the government can make an offer of settlement after an application for fees and other expenses has been filed. If the government's offer is rejected and the prevailing party seeking recovery ultimately wins a smaller award, that party is not entitled to the attorneys' fees and costs incurred after the date of the government's offer. Again, this will encourage settlement and speed the claims process. It will reduce the time and expense of the litigation.

This bill also requires the government agency that brought the case against the small business or individual to pay attorneys' fees from their own budgets. This provision ensures federal agencies will consider the financial impact of the actions they choose to bring against individuals and small businesses. OSHA, NLRB, EEOC, and the Mine Safety and Health Administration are exempt from this provision because they play a unique role in acting on behalf of workers to enforce the laws.

Finally, this bill will modify the definition of prevailing party to ensure that if claims filed against the government are the catalyst for a change in the position by the government that results in the individual or small business achieving a significant part of the relief sought, the individual or small business will be considered the prevailing party even if the case settles rather than going to a judgment. This reverses, in cases where fees are available under EAJA, the 2001 decision of the Supreme Court in Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources.

We all know that the American small business owner faces many challenges. Government regulation can be a formidable obstacle to conducting business, and litigation can be costly. The Equal Access to Justice Act was conceived and implemented as a check on the formidable power of the federal government. It has already helped many individual Americans and small businesses. The legislation we are offering today will make EAJA more effective and more fair. I want to thank Senator SNOWE for agreeing to work with me on this important bill. I hope our colleagues can support it.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2017

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 ''Equal Access to Justice Reform Act of 2005''.

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325 et seq.) (in this section referred to as ''EAJA'') was intended to make the justice system more accessible to individuals of modest means, small businesses, and nonprofit organizations (in this section collectively referred to as ''small parties'') through limited recovery of their attorneys' fees when they prevail in disputes with the Federal Government; and

(2) although EAJA has succeeded, at modest cost, in improving access to the justice system for small parties, EAJA retains formidable barriers to attorneys' fees recovery

(even for small parties that completely prevail against the Government), as well as inefficient and costly mechanisms for determining the fees recovery.

(b) PURPOSE.—It is, therefore, the purpose of this Act to remove existing barriers and inefficiencies in EAJA in order to—

(1) equalize the level of accountability to Federal law among governments in the United States;

(2) discourage marginal Federal enforcement actions directed at small parties;

(3) reduce the practice of paying EAJA liabilities from the General Treasury, to ensure that Federal agencies properly consider the financial consequences of their actions and subsequent impact on the Federal budget;

(4) refine and improve Federal policies through adjudication;

(5) promote a fair and cost-effective process for prompt settlement and payment of attorneys' fees claims; and

(6) provide a fairer opportunity for full participation by small businesses in the free enterprise system, further increasing the economic vitality of the Nation.

(c) COMPLIANCE POLICY.—In complying with the statement of congressional policy expressed in this section, each Federal agency, to the maximum extent practicable, should—

(1) avoid unjustified enforcement actions directed at small parties covered by EAJA;

(2) encourage settlement of justified enforcement actions directed at small parties covered by EAJA; and

(3) minimize impediments to prompt resolution and payment of reasonable attorneys' fees to prevailing small parties covered by EAJA.

SEC. 3. REPORTING AND TECHNICAL ASSISTANCE BY OFFICE OF ADVOCACY.

(a) FUNCTIONS OF OFFICE OF ADVOCACY.—Section 202 of Public Law 94–305 (15 U.S.C. 634b) is amended—

(1) in paragraph (3), by inserting before the semicolon at the end the following: ''and for ensuring that the justice system remains accessible to small businesses for the resolution of disputes with the Federal Government''; and

(2) by striking paragraph (11) and inserting the following:

''(11) advise, cooperate with, and consult with the President and Attorney General with respect to section 303(b) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(b)) and section 504(e) of title 5, United States Code; and''.

(b) DUTIES OF OFFICE OF ADVOCACY.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

(1) in paragraph (2), by inserting before the semicolon at the end the following: '', including the resolution of disputes with the Federal Government and the role of procedures established by the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325) in such disputes''; and

(2) in paragraph (3), by inserting after ''the Small Business Act'' the following: '', including those related to the Equal Access to Justice Act,''.

(c) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in cooperation with the Chief Counsel for Advocacy of the Small Business Administration, shall transmit to the congressional committees specified in paragraph (2) a report containing—

(A) an analysis of the effectiveness of the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325) (in this paragraph referred to as ''EAJA'') in achieving its purpose to ease the burden upon small businesses and other small parties covered by EAJA of engaging in dispute resolution with the Federal Government, including—

(i) the relative awareness of EAJA in the small business community;

(ii) the relative awareness of EAJA's requirements among Federal agencies;

(iii) the extent and quality of rules and regulations adopted by each Federal agency for processing, resolving, and paying attorneys' fees claims under EAJA;

(iv) the extent to which each Federal agency claims any exemptions in whole or in part from EAJA's coverage;

(v) the frequency or degree of use of EAJA's procedures by prevailing small businesses; and

(vi) an analysis of the costs and benefits of EAJA generally;

(B) an analysis of the variations in the frequency and amounts of fee awards paid by specific Federal agencies and within specific Federal circuits and districts under section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, including the number and total dollar amount of all claims filed with, and all claims processed, settled, litigated, and paid by, each agency under EAJA; and

(C) recommendations for congressional oversight or legislative changes with respect to EAJA, including any recommendations for promulgation or amendment of regulations issued under EAJA by specific Federal agencies.

(2) SPECIFIED COMMITTEES.—The congressional committees referred to in paragraph (1) are the following:

(A) The Committee on the Judiciary and the Committee on Small Business of the House of Representatives.

(B) The Committee on the Judiciary and the Committee on Small Business and Entrepreneurship of the Senate.

(3) REPORT ON SMALL BUSINESS AND COMPETITION.—Section 303 of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b) is amended—

(A) in subsection (a), by striking paragraph (5) and inserting the following:

''(5) recommend a program for carrying out the policy declared in section 302 (including a policy to ensure that the justice system remains accessible to small business enterprises for the resolution of disputes with the Federal Government), together with such recommendations for legislation as the President may deem necessary or desirable.'';

(B) in subsection (b)—

(i) by striking ''(b)'' and inserting ''(b)(1)''; and

(ii) by adding at the end the following:

''(2) The President, after consultation with the Chief Counsel for Advocacy of the Small Business Administration and the Attorney General, shall transmit simultaneously as an appendix to such annual report, a report that describes, by agency and department—

''(A) the total number of claims filed, processed, settled, and litigated by small business concerns under section 504 of title 5, United States Code, and section 2412 of title 28, United States Code (originally enacted pursuant to the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325));

''(B) the total dollar amount of all outstanding awards and settlements to small business concerns under such sections;

''(C) the total dollar amount of all claims paid to small business concerns under such sections;

''(D) the underlying legal claims involved in each controversy with small business concerns under such sections; and

''(E) any other relevant information that the President determines may aid Congress in evaluating the impact on small business concerns of such sections.

''(3) Each agency shall provide the President with such information as is necessary for the President to comply with the requirements of this subsection.''; and

(C) in subsection (d)—

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

(ii) by adding at the end the following:

''(2) All reports concerning the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325), or the congressional policy to ensure that the justice system remains accessible to small business enterprises for the resolution of disputes with the Federal Government, shall be transmitted to the following congressional committees:

''(A) The Committee on the Judiciary and the Committee on Small Business of the House of Representatives.

''(B) The Committee on the Judiciary and the Committee on Small Business and Entrepreneurship of the Senate.''.

SEC. 4. EQUAL ACCESS FOR SMALL PARTIES IN CIVIL AND ADMINISTRATIVE PROCEEDINGS.

(a) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by striking '', unless the adjudicative officer'' and all that follows through the period at the end and inserting a period; and

(B) in subsection (a)(2), by striking ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) in subsection (d)(1)(A), by striking '', unless the court'' and all that follows through the period at the end and inserting a period;

(B) in subsection (d)(1)(B), by striking ''The party shall also allege'' and all that follows through the period at the end and inserting a period; and

(C) in subsection (d)(3), by striking '', unless the court'' and all that follows through the period at the end and inserting a period.

(b) ELIGIBILITY OF SMALL BUSINESSES FOR FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—

(A) IN GENERAL.—Section 504(b)(1)(B)(ii) of title 5, United States Code, is amended by striking ''$7,000,000'' and inserting ''$10,000,000''.

(B) ADJUSTMENT IN NET WORTH LIMITATION.—Section 504(b) of title 5, United States Code, is amended by adding at the end the following:

''(3) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (1)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics.''.

(2) JUDICIAL PROCEEDINGS.—

(A) IN GENERAL.—Section 2412(d)(2)(B)(ii) of title 28, United States Code, is amended by striking ''$7,000,000'' and inserting ''$10,000,000''.

(B) ADJUSTMENT IN NET WORTH LIMITATION.—Section 2412(d) of title 28, United States Code, is amended by adding at the end the following:

''(5) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (2)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics.''.

(c) ELIMINATION OF RATE CAP.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A) of title 5, United States Code, is amended—

(A) by striking ''(i)''; and

(B) by striking ''by the agency involved'' and all that follows through ''a higher fee'' and inserting ''by the agency involved''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A) of title 28, United States Code, is amended—

(A) by striking ''(i)''; and

(B) by striking ''by the United States'' and all that follows through ''a higher fee'' and inserting ''by the United States''.

(d) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a) of title 5, United States Code, as amended by this section, is further amended by adding at the end the following:

''(5)(A) At any time after an agency receives an application submitted under paragraph (2), the agency may serve upon the applicant a written offer of settlement of the claims made in the application. If within 10 business days after such service the applicant serves written notice that the offer is accepted, either the agency or the applicant may then file the offer and notice of acceptance together with proof of service thereof.

''(B) An offer not accepted within the time allowed shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for fees or other expenses incurred (in relation to the application for fees and expenses) after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1) of title 28, United States Code, as amended by this section, is further amended by adding at the end the following:

''(E)(i) At any time after an agency receives an application submitted under subparagraph (B), the agency may serve upon the applicant a written offer of settlement of the claims made in the application. If within 10 business days after such service the applicant serves written notice that the offer is accepted, either the agency or the applicant may then file the offer and notice of acceptance together with proof of service thereof.

''(ii) An offer not accepted within the time allowed shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for fees or other expenses incurred (in relation to the application for fees and expenses) after the date of the offer.''.

(e) DECLARATION OF INTENT TO SEEK FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, as amended by this section, is further amended by inserting before the first sentence the following: ''At any time after the commencement of an adversary adjudication, the adjudicative officer may (and if requested by a party shall) require a party to declare whether such party intends to seek an award of fees and expenses against the agency should such party prevail.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, as amended by this section, is further amended by inserting before the first sentence the following: ''At any time after the commencement of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, the court may (and if requested by a party shall) require a party to declare whether such party intends to seek an award of fees and expenses against the agency should such party prevail.''.

(f) PAYMENT OF ATTORNEYS' FEES FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Fees and other expenses awarded under this section shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

''(2) Fees and expenses awarded under this section may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.

''(3) Paragraph (2) shall not apply to the National Labor Relations Board, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, or the Equal Employment Opportunity Commission.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended to read as follows:

''(4)(A) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

''(B) Fees and expenses awarded under this section may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.

''(C) Subparagraph (B) shall not apply to the National Labor Relations Board, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, or the Equal Employment Opportunity Commission.''.

(g) ELIGIBILITY OF TAXPAYERS FOR FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, as amended by this section, is further amended by striking subsection (f).

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, as amended by this section, is further amended by striking subsection (e) and redesignating subsection (f) as subsection (e).

(h) CONFORMING AMENDMENT RELATING TO REPORTING REQUIREMENT UNDER SMALL BUSINESS ACT.—Section 504(e) of title 5, United States Code, is amended to read as follows:

''(e)(1) The Attorney General, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded to individuals during the preceding fiscal year pursuant to this section and section 2412 of title 28. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards for individuals engaged in disputes with Federal agencies. Each agency shall provide the Attorney General with such information as is necessary for the Attorney General to comply with the requirements of this subsection.

''(2) A requirement that the President report annually on proceedings affecting small business concerns under this section and under section 2412 of title 28 is provided in section 303(b) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(b)).''.

(i) APPLICABILITY.—The provisions of this section and the amendments made by this section shall apply to any proceeding pending on, or commenced on or after, the effective date of this Act.

SEC. 5. DEFINITION OF PREVAILING PARTY IN EAJA CASES.

(a) TITLE 5.—Section 504(b)(1) of title 5, United States Code, is amended by adding at the end the following:

''(G) 'prevailing party' includes, in addition to a party who prevails through a judicial or administrative judgment or order, a party whose pursuit of a nonfrivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought.''.

(b) TITLE 28.—Section 2412 of title 28, United States Code, is amended—

(1) in subsection (d)(2)(H), by inserting after ''means'' the following: '', subject to subsection (g),''; and

(2) by adding at the end the following:

''(g) For the purposes of this section, the term 'prevailing party' includes, in addition to a party who prevails through a judicial or administrative judgment or order, a party whose pursuit of a nonfrivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought.''.

SEC. 6. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act.

Ms. SNOWE. Mr. President, as Chair of the Senate Committee on Small Business and Entrepreneurship, I have fought to ensure that small businesses across the country are treated fairly by the Federal Government. Unfortunately, in far too many cases, Federal agencies take arbitrary or abusive enforcement actions against small businesses. Few repercussions deter the Federal Government from taking these unwarranted and unjust actions, which can irreparably injure the reputation and financial viability of a small business.

Enacted in 1980 on a bipartisan basis, the Equal Access to Justice Act (EAJA) intended to allow small businesses to collect legal fees after prevailing in litigation against the Federal Government. However, a number of barriers and inefficiencies exist within EAJA that prevent its effectiveness.

For example, EAJA currently requires a small business that has prevailed in litigation against the Federal Government to enter into a costly second proceeding with the government. At the second proceeding, the government can assert a ''substantial justification'' defense to prevent the small business from recovering its legal costs, even though the small business prevailed on the merits of the underlying case in court. Even in instances when the Federal Government based its actions entirely on erroneous facts or without any legal basis, if the Federal Government can show that it was ''substantially justified'' in taking its actions, then a small business will be barred from EAJA recovery.

In practice, courts typically give a very wide berth to the government's substantially justified defense—a reality that means that prevailing small businesses can rarely, if ever, recover their legal fees under EAJA. And while a second proceeding may be in the best interest of the Federal agency—especially because its case is being funded by the General Treasury—the second proceeding may ultimately be more costly and more time consuming to the small business than the original, underlying case.

I believe that this is a flawed system. Small businesses are a driving force of the United States economy, representing 99.7 percent of all employer firms and generating approximately 75 percent of net new jobs annually. It is in our Nation's best interest to protect and watch over small businesses, as their success and vitality are key to America's economy and job growth.

It's plain and simple: We should not idly stand by while the Federal Government mistreats our Nation's small businesses.

That is why today I introduce with my colleague Senator FEINGOLD the Equal Access to Justice Reform Act of 2005 (EAJRA). This bill would ensure that small businesses are adequately protected from unreasonable regulations and actions, as well as update EAJA to better serve today's small businesses.

Under our legislation, small parties would be more likely to recover their legal fees when they prevail in litigation against the Federal Government. First, the EAJRA would eliminate the ''substantial justification'' defense, which would increase the likelihood that small businesses will be able to recover their legal costs after their winning their case.

Second, our legislation would modernize the EAJA by updating eligibility qualifications for small businesses. It would raise the threshold for qualifying small businesses from $7 million to $10 million net worth, and index that threshold for inflation. Given modern economic realities, a net worth of $7 million is no longer sufficient.

Third, the EAJRA would remove the hourly rate cap on attorney's fees. The current hourly rate cap of $125 was set during EAJA's enactment in 1980, and has yet to be adjusted for inflation. However, the market rate for competent legal services, especially for complex and high-risk litigation against the Federal Government, is far greater than the cap of $125 per hour. This limit prevents small businesses from receiving fair and just reimbursement of attorney's fees, placing them at a notable disadvantage.

Finally, the EAJRA would require agencies that lose lawsuits, other than the National Labor Relations Board, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the Equal Employment Opportunity Commission, to pay legal fees awarded under EAJA out of their own budgets and not the General Treasury. This would eliminate inefficient uses of Federal agency resources and would discourage marginal or abusive Federal enforcement actions directed at small parties. In addition, the Federal budget would no longer be unnecessarily burdened.

The EAJRA creates a fair and even playing field. It would equalize the level of accountability to Federal law among governments in the United States. It is a ''good government'' statute that would promote justice and equality of treatment between small and large entities, and would greatly increase transparency in the Federal Government.

This legislation is absolutely necessary. I urge my colleagues to support the Equal Access to Justice Reform Act so that we can ensure that our nation's small businesses are protected from unfair and unreasonable governmental actions.

By Mr. SMITH (for himself and Mr. BAUCUS):

S. 2019. A bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes; to the Committee on Environment and Public Works.

Mr. BAUCUS. Mr. President, I am pleased to introduce with Senator SMITH a bill that would provide for the establishment of voluntary, ''health-based'' remediation guidelines for former methamphetamine laboratories, an issue of great importance to Montana, Oregon, and all of rural America.

The material and chemical byproducts of methamphetamine production pose novel risks to the environment and public health. These risks are compounded by the sheer number of meth labs and the vulnerability of police, social service workers, and children exposed to meth production. The DEA estimated that there were as many as 16,000 meth labs in operation in 2004. Additionally, thousands of meth labs have been busted over the years but never properly remediated. Producing one pound of meth leaves behind six pounds of hazardous waste. In addition to bulk waste, cooking meth infuses toxic chemicals into the walls, carpeting, and ventilation systems of the homes, apartments, motel rooms, and parks where meth is produced.

Unremediated methamphetamine labs pose significant public health risks. The Department of Health and Human Services has reported that law enforcement officials and social service workers exposed to meth labs, or even just individuals removed from meth labs, have complained of severe headaches, eye and respiratory irritations, nausea, and burns. The need for remediation guidelines is clear.

Currently, eight States, including Montana, have ''feasibility-based'' remediation standards. ''Feasibility-based'' standards consider cost as a key factor in determining what level of remediation is desirable. While such standards are a start, we need greater certainty that our public servants and children are adequately protected.

Our bill provides a remedy. It directs the Assistant Administrator for Research and Development of the EPA to establish voluntary remediation guidelines, based on the best available scientific knowledge. To further this effort, our bill provides for a program of research to identify methamphetamine laboratory-related chemicals of concern, assess the types and levels of exposure to chemicals of concern—including routine and accidental exposures—that may present a significant risk of adverse biological effects, and evaluate the performance of various methamphetamine laboratory cleanup and remediation techniques. Our bill does not regulate States. The remediation guidelines are purely voluntary, meant to put States, remediation consultants, homeowners, and realtors on the same page.

Methamphetamine production poisons not only users but also spouses, children, public servants, and any future owners of properties exposed to meth production. To protect the public we need consistent, scientifically-based remediation guidelines.

By Mr. CHAMBLISS:

S. 2021. A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Office of National Veterans Sports Programs and Special Events; to the Committee on Veterans' Affairs.

Mr. CHAMBLISS. Mr. President, I rise today to introduce my bill, the ''Disabled Veterans Sports and Special Events Promotion Act of 2005''.

We discovered during World War II that sports and physical activity play a vital role in the rehabilitation of recently disabled military personnel. Young service members who had just returned from WWII and were undergoing rehabilitation were drawn to sports and other team activities. The appeal of sports for these veterans served as more than just a rehabilitation technique. In fact, sports served as a source of motivation as well as a path to a fuller life for young people in the aftermath of a disability. As would be expected, many of these veterans became exceptional athletes and sought opportunities for competition and excellence in the new world of competitive Paralympic sports.

With the onset of hostilities in Afghanistan and Iraq, a new generation of U.S. military personnel with disabilities has emerged. These newly-disabled men and women are young, ambitious, goal-oriented and in their physical prime. Sport, which played a fundamental role for returning veterans of World War II, Korea, and Vietnam, has the capacity to assist military personnel in adjusting to life with a disability. The United States Olympic Committee (USOC) and its Paralympic partners recognize the opportunity to play a key role in the lives of returning military personnel with newly acquired disabilities.

The USOC Paralympic Military Program is a collaborative effort among the USOC, military installations and commands, Veterans' Affairs (VA) offices and programs, and Paralympic organizations nationwide that are conducting Paralympic sport programs for active duty military personnel and veterans who have physical disabilities.

The Program has been established to enable severely injured service members and veterans to enhance their rehabilitation, readiness and lifestyle through participation in Paralympic sports. The Program is designed for recently injured service members, 2001 and after, Paralympic-eligible disabilities; however, other service members and veterans with physical disabilities who are able to engage in program activities are welcome. Paralympic-eligible disabilities are: amputations, visual impairments, Brain injuries affecting physical mobility, spinal cord injuries and, other mobility-impairing disabilities.

This bill would establish within the Department of Veterans Affairs an Office of National Veterans Sports Programs and Special Events which would establish and carry out sports programs for disabled veterans. In addition, the office would arrange for the VA to sponsor sports programs for disabled veterans conducted by other groups if the Secretary detennines that the programs are consistent with the VA's goals and missions. The office would provide for, facilitate, and encourage disabled veterans to participate in these programs. Finally, the office will cooperate with the USOC and their Paralympic Military Program to promote participation of disabled veterans in the Paralympics.

This bill allows those injured in service to our country the option to regain a healthy, active lifestyle through sport and competition. Competing in sports such as cycling, fencing, shooting, sled hockey, table tennis, and sitting volleyball gives these injured veterans the opportunity to rehabilitate their bodies and minds while competing at the highest level. It is my hope that as we proceed with this bill, we keep the people at the receiving end of our decisions and deliberations foremost in our minds.

I ask my colleagues to support this bill.

By Mr. COLEMAN (for himself and Mr. BINGAMAN):

S. 2022. A bill to amend title XVIII of the Social Security Act to provide for coverage of remote patient management services for chronic health care conditions under the Medicare program; to the Committee on Finance.

Mr. COLEMAN. Mr. President, constituents across the country in rural areas face serious health care issues, not only in terms of illness but also in lack of easily accessible services. One out of every five Americans lives in rural areas however only one out of every ten physicians practice in rural areas. Forty percent of our rural population lives in a medically underserved area. With access to care an average of thirty miles away, rural areas have much to gain from the ability to access healthcare information at a distance. We depend on our farmers and ranchers—they are the lifeblood of America and take care of the essentials in our lives such as feeding us and clothing us. We should make sure to take care of them as well.

Today, I am proud to be joined by my friend, Senator BINGAMAN in introducing the Remote Monitoring Access Act of 2005 to overcome the barriers to more rapid diffusion of innovative new technologies that will improve quality and access to care for Medicare beneficiaries, by implementing changes in Medicare fee-for-service reimbursements. Our legislation would create a new benefit category for remote patient management services in the Medicare physician fee schedule. Under this category, Medicare would cover physician services involved with the remote management of specific medical conditions.

New technology that collects, analyzes, and transmits clinical health information is in development or has recently been introduced to the market. The promise of this remote management technology is clear: better information on the patient's condition—collected and stored electronically, analyzed for clinical value, and transmitted to the physician or the patient—should improve patient care and access.

Remote monitoring technology is also emerging to extend the provision of health care services to areas where there is a shortage of physicians. This technology allows physicians to monitor and treat patients without a face-to-face office visit, thereby increasing access to physicians for patients living in rural areas.

In its March 2001 report, ''Crossing the Quality Chasm,'' the Institute of Medicine stated that the automation of clinical and other health transactions was an essential factor for improving quality, preventing errors, enhancing consumer confidence in the health care system, and improving efficiency, yet ''health care delivery has been relatively untouched by the revolution in information technology that has been transforming nearly every other aspect of society.''

Three major areas in which remote management technologies are emerging in health care are the treatment of congestive heart failure (CHF), diabetes and cardiac arrhythmia.

Despite these innovations and their ability to improve care, many new clinical information and remote management technologies have failed to diffuse rapidly. A significant barrier to wider adoption and evolution of the technologies is the relative lack of payment mechanisms in fee-for-service Medicare to reimburse for remote, non-face-to-face management and disease management services provided by a physician.

Under existing Medicare fee schedules, physicians generally receive a fixed, predetermined amount for a given service. The cost of devices used or supplied in the service is usually bundled into the payment, and payments are primarily provided for face-to-face interactions between the physician and patient. The payment structure creates at least two problems for the wider adoption of patient management approaches using remote management technology.

To overcome the barriers to more rapid diffusion of innovative new technology for Medicare beneficiaries, changes in Medicare fee-for-service reimbursements are necessary. This legislation would create a new benefit category for remote patient management services in the Medicare physician fee schedule. Under this category, Medicare would cover physician services involved with the remote management of specific medical conditions.

The quality of care provided through remote management would allow physicians to qualify for bonus payments conditioned on specific quality measures. This legislation directs the Secretary, through the Agency for Health Care Research and Quality (AHRQ) to develop standards of care and quality standards for the remote management services provided for each medical condition covered. AHRQ would develop these standards working in conjunction with appropriate physician groups. The Secretary is also given the authority to develop guidelines on the frequency of billing for remote patient management services.

I urge my fellow colleagues to join me in ensuring rural Americans have the access to remote monitoring and the opportunity to keep pace with health technology by supporting the Remote Monitoring Access Act of 2005.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2022

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 ''Remote Monitoring Access Act of 2005''.

SEC. 2. COVERAGE OF REMOTE PATIENT MANAGEMENT SERVICES FOR CHRONIC HEALTH CARE CONDITIONS.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

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

(2) in subparagraph (Z), by inserting ''and'' at the end; and

(3) by inserting after subparagraph (Z) the following new subparagraph:

''(AA) remote patient management services (as defined in subsection (bbb));''.

(b) SERVICES DESCRIBED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Remote Patient Management Services

''(bbb)(1) The term 'remote patient management services' means the remote monitoring and management of an individual with a covered chronic health condition (as defined in paragraph (2)) through the utilization of a system of technology that allows a remote interface to collect and transmit clinical data between the individual and the responsible physician or supplier for the purposes of clinical review or response by the physician or supplier.

''(2) For purposes of paragraph (1), the term 'covered chronic health condition' includes—

''(A) heart failure;

''(B) diabetes;

''(C) cardiac arrhythmia; and

''(D) any other chronic condition determined by the Secretary to be appropriate for treatment through remote patient management services.

''(3)(A) The Secretary, in consultation with appropriate physician groups, may develop guidelines on the frequency of billing for remote patient management services. Such guidelines shall be determined based on medical necessity and shall be sufficient to ensure appropriate and timely monitoring of individuals being furnished such services.

''(B) The Secretary, acting through the Agency for Health Care Research and Quality, shall do the following:

''(i) Not later than 1 year after the date of enactment of the Remote Monitoring Access Act of 2005, develop, in consultation with appropriate physician groups, a standard of care and quality standards for remote patient management services for the covered chronic health conditions specified in subparagraphs (A), (B), and (C) of paragraph (2).

''(ii) If the Secretary makes a determination under paragraph (2)(D) with respect to a chronic condition, develop, in consultation with appropriate physician groups, a standard of care and quality standards for remote patient management services for such condition within 1 year of such determination.

''(iii) Periodically review and update such standards of care and quality standards under this subparagraph as necessary.''.

(c) PAYMENT UNDER THE PHYSICIAN FEE SCHEDULE.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (B)—

(i) in clause (ii)(II), by striking ''clause (iv)'' and inserting ''clauses (iv) and (v)''; and

(ii) by adding at the end the following new clause:

''(v) BUDGETARY TREATMENT OF CERTAIN SERVICES.—The additional expenditures attributable to services described in section 1861(s)(2)(AA) shall not be taken into account in applying clause (ii)(II) for 2006.''; and

(B) by adding at the end the following new paragraph:

''(7) TREATMENT OF REMOTE PATIENT MANAGEMENT SERVICES.—In determining relative value units for remote patient management services (as defined in section 1861(bbb)), the Secretary, in consultation with appropriate physician groups, shall take into consideration—

''(A) costs associated with such services, including physician time involved, installation and information transmittal costs, costs of remote patient management technology (including devices and software), and resource costs necessary for patient monitoring and follow-up (but not including costs of any related item or non-physician service otherwise reimbursed under this title); and

''(B) the level of intensity of services provided, based on—

''(i) the frequency of evaluation necessary to manage the individual being furnished the services;

''(ii) the amount of time necessary for, and the complexity of, the evaluation, including the information that must be obtained, reviewed, and analyzed; and

''(iii) the number of possible diagnoses and the number of management options that must be considered.''; and

(2) in subsection (j)(3), by inserting ''(2)(AA),'' after ''(2)(W),''.

(d) INCENTIVE PAYMENTS.—Section 1833 of the Social Security Act (42 U.S.C. 13951) is amended by adding at the end the following new subsection:

''(v) INCENTIVE FOR MEETING CERTAIN STANDARDS OF CARE AND QUALITY STANDARDS IN THE FURNISHING OF REMOTE PATIENT MANAGEMENT SERVICES.—In the case of remote patient management services (as defined in section 1861(bbb)) that are furnished by a physician who the Secretary determines meets or exceeds the standards of care and quality standards developed by the Secretary under paragraph (3)(B) of such section for such services, in addition to the amount of payment that would otherwise be made for such services under this part, there shall also be paid to the physician (or to an employer or facility in cases described in clause (A) of section 1842(b)(6)) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2006.

By Ms. MURKOWSKI:

S. 2024. A bill to raise the minimum State allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

Ms. MURKOWSKI. Mr. President, I rise to introduce a bill that will increase the minimum funding level for low population States for the U.S. Department of Housing and Urban Development's HOME Investment Partnerships Program.

This program was created when the Cranston-Gonzalez National Affordable Housing bill was signed into law in 1990. Funds were first appropriated for this program in 1992. HOME program funds are disbursed to State and local governments for the purpose of assisting with the expansion of housing for low-income families. These governmental entities have a great deal of flexibility when using these funds to implement the program's purpose.

When this program was created, a minimum funding level of $3 million was created for States that would normally receive a small amount of HOME funds under the allocation formula, which is based on a State's population, among other parameters. Five States—Alaska, Delaware, Nevada, Hawaii, and North Dakota—received this level of funding for this program in fiscal year 2005. Bearing in mind inflation between 1992—when this program was first funded—and 2005, a $3 million allocation in 1992 dollars decreased in value to $2,215,235 in 2005.

This is unacceptable. My State is one of the most expensive areas in the country to develop housing, especially when one takes into account the cost to transport building materials to extremely remote areas of my State.

This legislation increases the minimum State funding level for the HOME program to $5 million. Based on fiscal year 2005 allocations for this program, eight States received less than $5 million. Those States are: Alaska, Delaware, Nevada, Hawaii, Montana, North Dakota, Utah, and Wyoming. My proposed increase in funding would be offset by an overall decrease in allocations to other States. If a $5 million minimum funding level had been in place in fiscal year 2005, the other 42 States would only have experienced an overall decrease of less than $13 million. Bearing in mind that the amount appropriated in fiscal year 2005 for this program is $1.865 billion, such a decrease in funds seems reasonable considering no changes have been made to the minimum State funding level since the HOME program was first funded in 1992.

In addition, the congressionally appointed, bipartisan Millennium Housing Commission recommended increasing the minimum State funding level for the HOME program to $5 million in their May 30, 2002, report to Congress.

It is imperative that we address this important issue so that we can address the housing needs of a greater amount of low-income families in low-population States.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2024

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 ''Small State HOME Program Equity Act of 2005''.

SEC. 2. ALLOCATION OF RESOURCES.

Section 217(b)(2)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(b)(2)(A)) is amended by striking ''$3,000,000'' each place it occurs and inserting ''$5,000,000''.

By Mr. BAYH (for himself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. COLEMAN, Mr. GRAHAM, Mr. SALAZAR, Mr. SESSIONS, Mr. NELSON of Florida, Mr. LUGAR, and Mr. OBAMA):

S. 2025. A bill to promote the national security and stability of the United States economy by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, our dependence on foreign oil is sapping America's power and independence as a nation. It is urgent we begin now to diversify the fuels we use to power our vehicles or risk ceding our national power to the rulers of faraway deserts, distant tundras, steaming rain forests or off-shore, drilling platforms half a world away.

I rise today as part of a bipartisan group of 10 Senators who represent the American Northeast, South, Midwest and West to introduce the Vehicle and Fuel Choices for America Security Act.

We chose this title because nothing less than our national security is at stake.

Besides myself, the rest of the ''Gang of Ten,'' or the ''Energy Security Ten,'' as some call us are Senators SAM BROWNBACK of Kansas, EVAN BAYH of Indiana, NORM COLEMAN of Minnesota, LINDSEY GRAHAM of South Carolina, KEN SALAZAR of Colorado, JEFF SESSIONS of Alabama, BILL NELSON of Florida, RICHARD LUGAR of Indiana and BARACK OBAMA of Illinois. And we expect even more of our colleagues from both sides of the aisle will be joining us soon.

I hope that in the future we all look back on the day this bill was introduced as the beginning of a major shift in our national security strategy. I hope that history will say we saw a challenge to our national security and prosperity and then met it and mastered it.

A recent report by the International Energy Agency, IEA, sums up the urgent need for our legislation.

According to the IEA, global demand for oil—now about 85 million barrels a day—will increase by more than 50 percent to 130 million barrels a day between now and 2030 if nothing is done.

The industrialized world's dependence on oil heightens global instability. The authors of the IEA report note that the way things are going ''we are ending up with 95 percent of the world relying for its economic wellbeing on decisions made by five or six countries in the Middle East.''

Besides the Mideast, I would add that Nigeria is roiled by instability, Venezuela's current leadership is hostile to us and Russia's resurgent state power has ominous overtones.

In fact, we are just one well-orchestrated terrorist attack or political upheaval away from a $100-a-barrel overnight price spike that would that would send the global economy tumbling and the industrialized world, including China and India, scrambling to secure supplies from the remaining and limited number of oil supply sites.

History tells us that wars have started over such competition.

Left unchecked, I fear that we are literally watching the slow but steady erosion of America's power and independence as a nation—our economic and military power and our political independence.

We are burning it up in our automobile engines and spewing it from our tailpipes because of our absolute dependence on oil to fuel our cars and trucks.

That dependence on oil—and that means foreign oil because our own reserves are less than 1 percent of the world's oil reserves—puts us in jeopardy in three key ways—a convergence forming a perfect storm that is extremely dangerous to America's national security and economy.

First, the structure of the global oil market deeply affects—and distorts—our foreign policy. Our broader interests and aspirations must compete with our own need for oil and the growing thirst for it in the rest of the world—especially by China and India.

As a study in the journal Foreign Affairs makes clear, China is moving aggressively to compete for the world's limited supplies of oil not just with its growing economic power, but with its growing military and diplomatic power as well.

Second, today we must depend for our oil on a global gallery of nations that are politically unstable, unreliable, or just plain hostile to us.

All that and much more should make us worry because if we don't change—it is within their borders and under their earth and waters that our economic and national security lies.

Doing nothing about our oil dependency will make us a pitiful giant—like Gulliver in Lilliput—tied down by smaller nations and subject to their whims. And we will have given them the ropes and helped them tie the knots.

We can take on this problem now and stand tall as the free and independent giant we are by moving our nation—and the world—on to energy independence, by setting America free from its dependence on oil.

There is only one way to do this. We need to transform our total transportation infrastructure from the refinery to the tailpipe and each step in between because transportation is the key to energy independence.

Barely 2 percent of our electricity comes from oil.

Ninety six percent of the energy used to power our cars comes from oil—literally millions of barrels of oil per day. This is unsustainable and dangerous.

The Vehicle and Fuel Choices for America Security Act aims to strengthen America's security by transforming transportation from the refinery to the tailpipe and each step in between, thus breaking our dependence on foreign oil.

We start by making it our national policy to cut consumption by 10 million barrels a day over the next 25 years.

First, we need to rethink and then remake our fuel supplies. Gasoline is not the only portable source of stored energy. Tons of agricultural waste and millions of acres of idle grassland can be used to create billions of barrels of new fuels.

Our farmers could soon be measuring production in barrels of energy as well as bushels of food.

Then we must remake our automobile engines as well. Vehicles that get 500 miles per gallon—or that use no refined crude oil—are within our grasp. I know that sounds unbelievable. I am going to tell you how we can do it.

To help us get there, our bill also requires that by 2012, 10 percent of all vehicles sold in the U.S. be hybrid, hybrid-electric plug-in or alternative fuel vehicles. That number will rise by 10 percent a year until it reaches 50 percent in 2016.

To help spur this market along, our bill amends our current energy policy to require that one quarter of federal vehicles purchased must be hybrids or plug-in hybrids.

My bill will detail how we can get there with available technology and previously unavailable Federal Government leadership. Coupling these new programs with the explicit oil-savings goals for the Federal Government is the key to the effectiveness of this proposal.

I can almost hear colleagues murmur, So, Senator LIEBERMAN, what else is new? We've been hearing this for years and nothing has happened.

I can't blame you if you are skeptical. The struggle for oil independence has been going on at least since Jimmy Carter was President.

But things have changed since the days of Jimmy Carter and even since last summer. There is a new understanding of the depth of the crisis that our oil dependence is creating.

This summer's doubling of gasoline and crude oil prices hit tens of millions of Americans with the global reality of oil demand and pricing. And Hurricane Katrina reminded us how vulnerable our supplies can become.

This reality is bipartisan. And, along with my colleagues cosponsoring this bill, I think Americans are ready to set the serious goals that eluded us in the past and take the bold steps necessary to reach those goals.

Now let me give you more details.

The bill I will propose puts our Nation's transportation system on a new road—a road where the tanks are filled with more home-grown fuel—and I do mean grown—not just American corn, but from American sugar, prairie grass, and agricultural waste.

We will push harder for more and quicker production and commercialization of biomass-based fuels.

The Energy bill signed into law last summer created a new set of incentives for these fuel alternatives, including their commercial production.

What my bill would do—again, by including a mass-production mandate for alternative fuel vehicles—is ensure that the investments would be made in the facilities to produce and market these new fuels by providing big demand for them.

The bill would also create a program to guarantee that filling stations had the pumps to provide the fuel to keep pace with the growing alternative-fuel fleet produced by the mandate.

Is there a model to give us confidence we can achieve this transformation? Yes.

Brazil is now enjoying substantial immunity from current high world oil prices, thanks to a long-term strategy, launched during the oil shocks of the 1970s, to integrate sugar cane ethanol into its fuel supply. They started initially with a mandate that all fuel sold in the country contain 25 percent alcohol. They are now up to 40 percent biofuels.

In addition to the fuel mandate, Brazil offered low-interest loans and tax breaks for the building of distilleries and subsidized a fuel distribution network.

Brazil has the advantage of a substantial sugar cane industry already in place. But we have our own vast potential to develop our own biofuel supply, using feedstock like corn, crop waste, switch grass, sugarcane and fast-growing trees and shrubs such as hybrid poplars and willows.

According to the Department of Energy, if two-thirds of the Nation's idled cropland were used to grow these kinds of energy crops, the result could be dramatic. Those 35 million acres could produce between 15 and 35 billion gallons of ethanol each year to fuel cars, trucks, and buses.

That is about 2.2 million barrels of fuel a day from right here in the U.S.A.

What Brazil offers us, more importantly, is a case study of government leadership to combine technology mandates and subsidies to wean its transportation sector from foreign oil to a domestic alternative.

From this January through this July—before this summer's fuel spike—we have sent almost $100 billion out of the country to purchase oil, while the Brazilians are now relying on home-grown fuel.

The key to their success is that they responded 30 years ago to the first storm warnings. We did not, and now the storm is at our shores, slapping against the levees of our economic strength and national security. We have to mobilize and lead a similar response as Brazil did.

If we do this right, our farmers could soon be measuring production in barrels of energy as well as bushels of food. Our energy would be guaranteed ''Made in America'' and the profits would be guaranteed ''Kept in America.''

For all these new fuels to be effective, we need the flexible fuel vehicles that can take advantage of them.

As I said earlier, our bill also requires that 50 percent of all vehicles sold in the U.S. be hybrid, hybrid-electric plug-in, or alternative fuel vehicles by 2016.

Sound ambitious? It is not. It has already happened in Brazil. Several automakers selling cars in Brazil, including our own General Motors and Ford, already manufacture a fleet that is more than 50-percent flexible fuel cars that can run on any combination of gasoline and biofuels.

The technology exists now and adds a negligible cost—about $150—to the price of each vehicle. For this we get the flexibility to power a car with fuel made from corn, prairie grass, or agricultural waste from our own heartland that will cost a lot less than gasoline does today.

Maximizing fuel efficiency and promoting energy independence even further would be a new generation of flexible-fuel hybrid cars known as plug-ins because you can plug them in at night to recharge the battery.

Hybrids that use a use both a gasoline engine and electric motor for power are already getting 50 miles per gallon. Making them flexible fuel cars, as I've already said, can save us more than 2 million barrels of gasoline a day.

But we can do even better—dramatically better—with the plug-in hybrid that is just now on the threshold of commercialization. Like the present hybrids, it would use both a gasoline and electric motor. But the plug-in hybrid would be able to use the battery exclusively for the first 30 miles of a trip.

Think of that for a minute. Although Americans drive about 2.2 trillion miles a year, according the Census, the vast majority of those trips are less than 15 miles.

That means a plug-in hybrid would use zero—zero—gallons of gas or any combustible fuel for the vast majority of its trips. And experts tell me it could effectively get the 500 miles per gallon on longer trips.

Plugging in your car during off peak hours—when power is in surplus and cheaper—would soon just become part of the modem daily routine, like plugging in your cell phone or PDA before you go to bed.

And off-peak electricity can be the equivalent of 50 cent a gallon gasoline, I repeat—the equivalent of 50 cent a gallon fuel is feasible.

Of course, electricity does not come magically through the wires to our homes. That power would come from coal, natural gas, nuclear, solar, wind or other sources—sources that we have in abundance here at home—and a little—very little—would come from oil.

This isn't pie in the sky. These vehicles could be in your garage within a couple of years. Some of the incentives for achieving this were included in the Energy bill signed into law in August. But they did not go nearly far enough.

We need to couple these incentives with real performance standards and sales requirements to ensure that as soon as possible new cars are running not just on gasoline but on biofuels and electricity.

As always, there is a do-nothing crowd that says the ever-rising price of gasoline and crude oil are the cure—that with higher prices people will reduce consumption and the market will respond with greater investments in the supply of oil to bring prices down.

But all that would do is perpetuate the problem. Market-driven oil-dependency is still dependency on foreign oil, driving us further down the current path toward national insecurity and economic and environmental troubles.

Some say that we can ease the crisis through greater domestic drilling—in places like the Arctic Refuge and other public lands or off our shores.

But that won't make a dent in the problem. In the world of oil, geology is destiny and the U.S. today has only 1 percent of the world's oil reserves. And that small new supply wouldn't matter much in the global market, since the price of oil produced within the United States rises and falls with the global market, regardless of where it is produced.

We just don't have enough oil in the U.S. anymore. And no matter how much more we drill, we will still be paying the world price of oil—not an American price.

Our present energy and transportation systems were born at the end of the 19th and the beginning of the 20th centuries with the twin discoveries of oil extraction and the internal combustion engine. Those systems have served us well bringing growth to our Nation and the world.

But it is now the 21st century, and it is time to move on. The era of big oil is over. It is time to revolutionize our entire energy infrastructure, from the refinery to the tailpipe, and begin a new era of energy independence.

It is time to set America free by cutting our dependence on foreign oil and by doing so strengthen our security, preserve our independence and energize our economy.

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mr. DORGAN, and Mr. DAYTON):

S. 2026. A bill to amend title XVIII of the Social Security Act to require that a prescription drug plan or an MA–PD plan that has an initial coverage limit obtain a signed certification prior to enrolling beneficiaries under the plan under part D of such title; to the Committee on Finance.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Medicare Prescription Drug Gap Disclosure Act with my colleagues, Senators KERRY, DORGAN and DAYTON. This important legislation will require Medicare beneficiaries enrolling in a Medicare Prescription Drug Plan, PDP, or Medicare Advantage Drug Plan, MA–PD, with a potential coverage gap to sign a short, easy to read, statement indicating that they are aware of the potential loss of coverage.

Yesterday, 42 million Medicare beneficiaries became eligible to sign up for the new Medicare prescription drug benefit, scheduled to start on January 1, 2006. However, too many seniors are understandably confused about this complicated change to Medicare, and I fear that many may sign up for drug plans without understanding the major pitfalls of the program. The biggest pitfall in the drug plan is the notorious ''coverage gap'' also known as the ''donut hole.''

In the coverage gap, beneficiaries pay 100 percent of prescription costs after they exceed a certain level of out-of-pocket spending and before protection kicks in against catastrophic drug expenses. They also continue to pay 100 percent of their monthly premiums.

We need to make sure that seniors are aware of the threat that the coverage gap poses, and it should not be hidden in a mountain of paperwork. My legislation would require plan providers to have beneficiaries sign the following certification before enrollment:

I understand that the Medicare Prescription Drug Plan or MA–PD Plan that I am signing up for may result in a gap in coverage during a given year. I understand that if subject to this gap in coverage, I will be responsible for paying 100 percent of the costs of my prescription drugs and will continue to be responsible for paying the plan's monthly premium while subject to this gap in coverage. For specific information on the potential coverage gap under this plan, I understand that I should contact [prescription drug plan] at [toll free phone number].

The bottom line is that, after months of trying to explain this new drug benefit to Medicare beneficiaries, many do not understand the ramifications of the coverage gap. Unfortunately, millions of Medicare beneficiaries may learn about the coverage gap the hard way—when the pharmacist at the cash register tells them sometime next year that they are suddenly required to pay the full cost of their prescriptions.

Mr. President, a study by the Commonwealth Fund found that 38 percent of Medicare enrollees are likely to experience this costly interruption in care. Moreover, the benefits must be renewed each year, meaning that the coverage gap repeats itself if beneficiaries reach the coverage gap again.

A recent survey by the Kaiser Foundation and the Harvard School of Public Health, found that only 35 percent of people 65 and older said they understood the new drug benefit. In addition, the numerous media stories in recent days contain anecdotal evidence that illustrates the confusion around the new drug benefit.

I therefore urge my colleagues to support this bill. Only with such a clear, separate disclaimer will seniors have a fair opportunity to be warned of the risks posed by this gap in drug coverage.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2026

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 ''Medicare Prescription Drug Gap Disclosure Act''.

SEC. 2. REQUIREMENT OF SIGNED CERTIFICATION PRIOR TO PLAN ENROLLMENT UNDER PART D.

(a) IN GENERAL.—Section 1860D–1(b)(1) of the Social Security Act (42 U.S.C. 1395w–101) is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR PLANS WITH AN INITIAL COVERAGE LIMIT.—

''(i) IN GENERAL.—The process for enrollment established under subparagraph (A) shall include, in the case of a prescription drug plan or an MA–PD plan that has an initial coverage limit (as described in section 1860D–2(b)(3)), a requirement that, prior to enrolling a part D eligible individual in the plan, the plan must obtain a certification signed by the enrollee or the legal guardian of the enrollee that meets the requirements described in clause (ii) and includes the following text: 'I understand that the Medicare Prescription Drug Plan or MA–PD Plan that I am signing up for may result in a gap in coverage during a given year. I understand that if subject to this gap in coverage, I will be responsible for paying 100 percent of the cost of my prescription drugs and will continue to be responsible for paying the plan's monthly premium while subject to this gap in coverage. For specific information on the potential coverage gap under this plan, I understand that I should contact (insert name of the sponsor of the prescription drug plan or the sponsor of the MA–PD plan) at (insert toll free phone number for such sponsor of such plan).'.

''(ii) CERTIFICATION REQUIREMENTS DESCRIBED.—The certification required under clause (i) shall meet the following requirements:

''(I) The certification shall be printed in a typeface of not less than 18 points.

''(II) The certification shall be printed on a single piece of paper separate from any matter not related to the certification.

''(III) The certification shall have a heading printed at the top of the page in all capital letters and bold face type that states the following: 'WARNING: POTENTIAL MEDICARE PRESCRIPTION DRUG COVERAGE GAP'.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 317—EXPRESSING THE SENSE OF THE SENATE REGARDING OVERSIGHT OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Mr. BURNS (for himself, Mr. LEAHY, Mr. INOUYE, Mr. SMITH, Mr. STEVENS, Mr. SUNUNU, Mr. NELSON of Florida, Mrs. HUTCHISON, Mr. INHOFE, Mr. ALLEN, and Mr. CRAIG) submitted the following resolution; which was considered and agreed to:

S. RES. 317

Whereas the origins of the Internet can be found in United States Government funding of research to develop packet-switching technology and communications networks, starting with the ''ARPANET'' network established by the Department of Defense's Advanced Research Projects Agency in the 1960s and carried forward by the National Science Foundation's ''NSFNET'';

Whereas in subsequent years the Internet evolved from a United States Government research initiative to a global tool for information exchange as in the 1990s it was commercialized by private sector investment, technical management and coordination;

Whereas since its inception the authoritative root zone server—the file server system that contains the master list of all top level domain names made available for routers serving the Internet—has been physically located in the United States;

Whereas today the Internet is a global communications network of inestimable value;

Whereas the continued success and dynamism of the Internet is dependent upon continued private sector leadership and the ability for all users to participate in its continued evolution;

Whereas in allowing people all around the world freely to exchange information, communicate with one another, and facilitate economic growth and democracy, the Internet has enormous potential to enrich and transform human society;

Whereas existing structures have worked effectively to make the Internet the highly robust medium that it is today;

Whereas the security and stability of the Internet's underlying infrastructure, the domain name and addressing system, must be maintained;

Whereas the United States has been committed to the principles of freedom of expression and the free flow of information, as expressed in Article 19 of the Universal Declaration of Human Rights, and reaffirmed in the Geneva Declaration of Principles adopted at the first phase of the World Summit on the Information Society;

Whereas the U.S. Principles on the Internet's Domain Name and Addressing System, issued on June 30, 2005, represent an appropriate framework for the coordination of the system at the present time;

Whereas the Internet Corporation for Assigned Names and Numbers popularly known as ICANN, is the proper organization to coordinate the technical day-to-day operation of the Internet's domain name and addressing system;

Whereas all stakeholders from around the world, including governments, are encouraged to advise ICANN in its decision-making;

Whereas ICANN makes significant efforts to ensure that the views of governments and all Internet stakeholders are reflected in its activities;

Whereas governments have legitimate concerns with respect to the management of their country code top level domains;

Whereas the United States Government is committed to working successfully with the international community to address those concerns, bearing in mind the need for stability and security of the Internet's domain name and addressing system;

Whereas the topic of Internet governance, as currently being discussed in the United Nations World Summit on the Information Society is a broad and complex topic;

Whereas it is appropriate for governments and other stakeholders to discuss Internet governance, given that the Internet will likely be an increasingly important part of the world economy and society in the 21st Century;

Whereas Internet governance discussions in the World Summit should focus on the real threats to the Internet's growth and stability, and not recommend changes to the current regime of domain name and addressing system management and coordination on political grounds unrelated to any technical need; and

Whereas market-based policies and private sector leadership have allowed this medium the flexibility to innovate and evolve: Now, therefore, be it

Resolved by the Senate, That it is the sense of the Senate that—

(1) it is incumbent upon the United States and other responsible governments to send clear signals to the marketplace that the current structure of oversight and management of the Internet's domain name and addressing service works, and will continue to deliver tangible benefits to Internet users worldwide in the future; and

(2) therefore the authoritative root zone server should remain physically located in the United States and the Secretary of Commerce should maintain oversight of ICANN so that ICANN can continue to manage the day-to-day operation of the Internet's domain name and addressing system well, remain responsive to all Internet stakeholders

worldwide, and otherwise fulfill its core technical mission.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2581. Mr. ENZI (for Mr. GRASSLEY (for himself, Mr. ENZI, Mr. KENNEDY, and Mr. BAUCUS)) proposed an amendment to the bill S. 1783, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

SA 2582. Mr. ISAKSON (for himself, Mr. NELSON, of Florida, Mr. LOTT, Mr. COLEMAN, Mr. ROCKEFELLER, Mr. DEWINE, Mr. ALEXANDER, Mr. BENNETT, Mr. BURNS, Mr. HATCH, Mr. CHAMBLISS, Mr. CARPER, and Mr. SALAZAR) proposed an amendment to the bill S. 1783, supra.

SA 2583. Mr. AKAKA (for himself, Mr. SPECTER, Mr. DURBIN, Mr. SALAZAR, Mr. INOUYE, and Mrs. FEINSTEIN) proposed an amendment to the bill S. 1783, supra

SA 2584. Mr. ISAKSON (for Mr. CRAIG) proposed an amendment to the bill S. 1234, to increase, effective as of December 1, 2005, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

SA 2585. Mr. ISAKSON (for Mr. DODD (for himself and Mr. MCCONNELL)) proposed an amendment to the concurrent resolution S. Con. Res. 62, directing the Joint Committee on the Library to procure a statue of Rosa Parks for placement in the Capitol.

SA 2586. Mr. SMITH (for himself, Mrs. LINCOLN, Mr. PRYOR, Mr. BUNNING, Mr. BURR, Mr. CHAMBLISS, Mrs. DOLE, Mrs. MURRAY, and Ms. CANTWELL) submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table.

SA 2587. Mr. DORGAN (for himself, Mr. DODD, Mrs. BOXER, Mr. REED, Mr. LIEBERMAN, and Mr. KOHL) proposed an amendment to the bill S. 2020, supra.

SA 2588. Mr. KENNEDY (for himself, Ms. LANDRIEU, Mr. DURBIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill S. 2020, supra; which was ordered to lie on the table.

SA 2589. Mr. MARTINEZ submitted an amendment intended to be proposed by him to the bill S. 2020, supra; which was ordered to lie on the table.

SA 2590. Mr. KOHL (for himself and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 2020, supra; which was ordered to lie on the table.

SA 2591. Mr. MCCONNELL (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill S. 1238, to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes.

SA 2592. Mr. MCCONNELL (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill S. 485, to reauthorize and amend the National Geologic Mapping Act of 1992.

SA 2593. Mr. MCCONNELL (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill S. 1170, An act to establish the Fort Stanton-Snowy River Cave National Conservation Area.

SA 2594. Mr. MCCONNELL (for Mr. DOMENICI) proposed an amendment to the bill S. 1170, supra.

SA 2595. Mr. SCHUMER (for himself, Mrs. CLINTON, Mr. SMITH, and Mr. WYDEN) submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table.

SA 2596. Mr. DURBIN proposed an amendment to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table.

SA 2597. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2581. Mr. ENZI (for Mr. GRASSLEY (for himself, Mr. ENZI, Mr. KENNEDY, and Mr. BAUCUS)) proposed an amendment to the bill S. 1783, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

TITLE I—FUNDING AND DEDUCTION RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

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

SEC. 101. MINIMUM FUNDING STANDARDS.

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 308 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1086) are repealed.

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

''MINIMUM FUNDING STANDARDS

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

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

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

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

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

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

''(b) LIABILITY FOR CONTRIBUTIONS.—

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

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

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

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

''(A) IN GENERAL.—If—

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

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

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

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

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

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

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

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

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

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

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

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

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

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

''(A) SECURITY MAY BE REQUIRED.—

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

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

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

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

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

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

''(ii) consider—

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

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

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

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2),

is less than $1,000,000.

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

''(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 303 for the plan year which is not paid on or before the due date (as determined under section 303(j)(1)) for the plan year.

''(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 for the plan year.

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

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

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

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

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

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

''(6) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation and in the case of a multiemployer plan, to each employer required to contribute to the plan under subsection (b)(1). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

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

''(7) RESTRICTION ON PLAN AMENDMENTS.—

''(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan amendment which—

''(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(ii) only repeals an amendment described in subsection (d)(2), or

''(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1 of the Internal Revenue Code of 1986.

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

''(d) MISCELLANEOUS RULES.—

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

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

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

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

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

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

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

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the items relating to sections 302 through 308 and inserting the following new item:

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2006.

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

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

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

''SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 302(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a defined benefit plan which is a single employer plan—

''(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is less than the funding target of the plan for the plan year, the sum of—

''(A) the target normal cost of the plan for the plan year,

''(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

''(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e); or

''(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by any such excess.

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

''(c) SHORTFALL AMORTIZATION CHARGE.—

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

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

''(A) DETERMINATION.—The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

''(B) SHORTFALL INSTALLMENT.—The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

''(C) SEGMENT RATES.—In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(3) SHORTFALL AMORTIZATION BASE.—For purposes of this section, the shortfall amortization base of a plan for a plan year is the excess (if any) of—

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

''(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

''(4) FUNDING SHORTFALL.—

''(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the funding shortfall of a plan for any plan year is the excess (if any) of—

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

''(ii) the value of plan assets of the plan (as reduced under subsection (f)(4)) for the plan year which are held by the plan on the valuation date.

''(B) TRANSITION RULE FOR AMORTIZATION OF FUNDING SHORTFALL.—

''(i) IN GENERAL.—Solely for purposes of applying paragraph (3) in the case of plan years beginning after 2006 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year.

''(ii) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

''(I) IN GENERAL.—Except as provided in subclause (II), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in 2008, and 100 percent for any succeeding plan year.

''(II) SMALL PLANS.—In the case of a plan described in subsection (g)(2)(B), the applicable percentage shall be determined in accordance with the following table:

''In the case of a plan year beginning in calendar year:	**The applicable percentage is—**
2007	92
2008	94
2009	96
2010	98.

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

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

''(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

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

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

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

''(e) WAIVER AMORTIZATION CHARGE.—

''(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

''(2) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

''(A) DETERMINATION.—The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

''(B) WAIVER INSTALLMENT.—The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

''(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c).

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

''(f) USE OF PREFUNDING BALANCES TO SATISFY MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—A plan sponsor may credit any amount of a plan's prefunding balance for a plan year against the minimum required contribution for the plan year and the amount of the contributions an employer is required to make under section 302(b) for the plan year shall be reduced by the amount so credited. Any such amount shall be credited on the first day of the plan year.

''(2) PREFUNDING BALANCE.—

''(A) BEGINNING BALANCE.—The beginning balance of a prefunding balance maintained by a plan shall be zero, except that if a plan was in effect for a plan year beginning in 2006 and had a positive balance in the funding standard account under section 302(b) (as in effect for such plan year) as of the end of such plan year, the beginning balance for the plan for its first plan year beginning after 2006 shall be such positive balance.

''(B) INCREASES.—

''(i) IN GENERAL.—As of the first day of each plan year beginning after 2007, the prefunding balance of a plan shall be increased by the excess (if any) of—

''(I) the aggregate amount of employer contributions to the plan for the preceding plan year, over

''(II) the minimum required contribution for the preceding plan year.

''(ii) ADJUSTMENTS FOR INTEREST.—Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

''(iii) CERTAIN CONTRIBUTIONS DISREGARDED.—Any contribution which is required to be made under section 206(g) in addition to any contribution required under this section shall not be taken into account for purposes of clause (i).

''(C) DECREASES.—As of the first day of each plan year after 2007, the prefunding balance of a plan shall be decreased (but not below zero) by the amount of the balance credited under paragraph (1) against the minimum required contribution of the plan for the preceding plan year.

''(D) ADJUSTMENTS FOR INVESTMENT EXPERIENCE.—In determining the prefunding balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary of the Treasury, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(3) LIMITATION FOR UNDERFUNDED PLANS.—

''(A) IN GENERAL.—If the ratio (expressed as a percentage) for any plan year which—

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

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

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 302(b) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subparagraph (B). Any contribution required by this subparagraph may not be reduced by any credit otherwise allowable under paragraph (1).

''(B) APPLICABLE AMOUNT.—The amount determined under this subparagraph for any plan year is the greater of—

''(i) the target normal cost of the plan for the plan year, or

''(ii) 25 percent of the minimum required contribution under subsection (a) for the plan year without regard to this subsection.

''(4) REDUCTION IN VALUE OF ASSETS.—Solely for purposes of applying subsections (a) and (c)(4)(A)(ii) in determining the minimum required contribution under this section, the value of the plan assets otherwise determined without regard to this paragraph shall be reduced by the amount of the prefunding balance under this subsection.

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

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

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

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

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

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

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

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

''(3) DETERMINATION OF VALUE OF PLAN ASSETS.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

''(B) AVERAGING ALLOWED.—A plan may determine the value of plan assets on the basis of any reasonable actuarial method of valuation providing for the averaging of fair market values, but only if such method—

''(i) is permitted under regulations prescribed by the Secretary of the Treasury, and

''(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 12th month preceding the valuation date and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month).

''(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of determining the value of assets under paragraph (3)—

''(A) PRIOR YEAR CONTRIBUTIONS.—If—

''(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

''(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2007, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

''(B) SPECIAL RULE FOR CURRENT YEAR CONTRIBUTIONS MADE BEFORE VALUATION DATE.—If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

''(i) such contributions, and

''(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

''(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

''(2) INTEREST RATES.—

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

''(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

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

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

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

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

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

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the

Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during each of the years in the 15-year period beginning at the end of the period described in clause (i).

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

''(D) CORPORATE BOND YIELD CURVE.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects the average, for the 12-month period ending with the month preceding such month, of yields on investment grade corporate bonds with varying maturities.

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

''(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve for such month and each of the rates determined under this paragraph for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2007 or 2008, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

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

''(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

''(3) MORTALITY TABLES.—

''(A) IN GENERAL.—Except as provided in subparagraphs (C) and (D), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Security and Transparency Act of 2005 and as revised from time to time under subparagraph (B).

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

''(C) SUBSTITUTE MORTALITY TABLE.—

''(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary of the Treasury, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section during the 10-consecutive plan year period specified in the request. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of clause (ii).

''(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary of the Treasury determines that—

''(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II),

''(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience,

''(III) except as provided by the Secretary, such table will be used by all plans maintained by the plan sponsor and all members of any controlled group which includes the plan sponsor, and

''(IV) such table is significantly different from the table described in subparagraph (A).

''(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect for the first plan year in the 10-year period described in clause (i) unless the Secretary of the Treasury, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii). The 180-day period shall be extended for any period during which the Secretary of the Treasury has requested information from the plan sponsor and such information has not been provided.

''(D) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding subparagraph (A)—

''(i) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary of the Treasury shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(ii) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

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

''(E) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in present value resulting from any differences in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year.

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

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

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

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

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

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

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

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

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

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

''(A) IN GENERAL.—In the case of a plan to which this subsection applies for a plan year, the funding target of the plan for the plan year is equal to the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B).

''(B) ADDITIONAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions described in this subparagraph are as follows:

''(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 7 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk target liability and at-risk target normal cost are being determined.

''(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of liabilities.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—In the case of a plan to which this subsection applies for a plan year, the target normal cost of the plan for such plan year shall be equal to the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B).

''(3) MINIMUM AMOUNT.—In no event shall—

''(A) the at-risk target liability be less than the target liability, as determined without regard to this subsection, or

''(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

''(4) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in at-risk status for a plan year if—

''(A) the plan is maintained by a financially-weak employer, and

''(B) the funding target attainment percentage for the plan year is less than 93 percent.

''(5) FINANCIALLY-WEAK EMPLOYER.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'financially-weak employer' means any employer if—

''(i) as of the valuation date for each of the years during a period of at least 3 consecutive plan years ending with the plan year—

''(I) the employer has an outstanding senior unsecured debt instrument which is rated lower than investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

''(II) if no such debt instrument has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer lower than investment grade, and

''(ii) at least 2 of the years during such period are deterioration years.

If an employer is treated as a financially-weak employer for any plan year, clause (ii) shall not apply in determining whether the employer is so treated for any succeeding plan year in any continuous period of plan years for which the employer is treated as a financially-weak employer.

''(B) CONTROLLED GROUP EXCEPTION.—If an employer treated as a financially-weak employer under subparagraph (A) is a member of a controlled group (as defined in section 302(d)(3)), the employer shall not be treated as a financially-weak employer if a significant member (as determined under regulations prescribed by the Secretary of the Treasury) of such group has an outstanding senior unsecured debt instrument that is rated as being investment grade by an organization described in subparagraph (A).

''(C) EMPLOYERS WITH NO RATINGS.—If—

''(i) an employer has no debt instrument described in subparagraph (A)(i) which was rated by an organization described in such subparagraph, and

''(ii) no such organization has made an issuer credit rating for such employer,

then such employer shall only be treated as a financially-weak employer to the extent provided in regulations prescribed by the Secretary of the Treasury.

''(6) DETERMINATION OF DETERIORATION YEAR.—For purposes of paragraph (5), the term 'deterioration year' means any year during the period described in paragraph (5)(A)(i) for which the rating described in subclause (I) or (II) of paragraph (5)(A)(i) by each organization is either—

''(A) lower than the lowest rating of the employer by such organization for a preceding year in such period, or

''(B) the lowest rating used by such organization.

''(7) YEARS BEFORE EFFECTIVE DATE.—For purposes of paragraphs (5) and (6), plan years beginning before 2007 shall not be taken into account.

''(8) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

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

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

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

''(B) IMPROVEMENT YEARS NOT TAKEN INTO ACCOUNT.—

''(i) IN GENERAL.—An improvement year shall not be taken into account in determining any consecutive period of plan years for purposes of subparagraph (A).

''(ii) APPLICATION OF SUBSECTION AFTER IMPROVEMENT YEAR ENDS.—Plan years immediately before and after an improvement year (or consecutive period of improvement years) shall be treated as consecutive for purposes of subparagraph (A).

''(iii) IMPROVEMENT YEAR.—For purposes of this subparagraph, the term 'improvement year' means any plan year for which any rating described in subclause (I) or (II) of paragraph (5)(A)(i) is higher than such rating for the preceding plan year.

''(C) TRANSITION PERCENTAGE.—For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

''If the consecutive number of years (including the plan year) the plan is in at-risk status is—	**The transition percentage is—**
1	20
2	40
3	60
4	80.

''(D) YEARS BEFORE EFFECTIVE DATE.—For purposes of this paragraph, plan years beginning before 2007 shall not be taken into account.

''(9) PLANS TO WHICH SUBSECTION APPLIES.—

''(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to any plan to which this section applies and which is in at-risk status for the plan year.

''(B) EXCEPTION FOR SMALL PLANS.—This subsection shall not apply to a plan for a plan year if the plan was described in subsection (g)(2)(B) for the preceding plan year, determined by substituting '500' for '100'.

''(C) EXCEPTION FOR PLANS MAINTAINED BY CERTAIN COOPERATIVES.—This subsection shall not apply to an eligible cooperative plan described in subparagraph (D).

''(D) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of subparagraph (C), a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

''(i) rural cooperatives (as defined in section 401(k)(7)(B) of the Internal Revenue Code of 1986 without regard to clause (iv) thereof), or

''(ii) organizations which are—

''(I) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

''(II) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subclause (I).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v).

''(E) EXCEPTION FOR PLANS SECURED BY THIRD PARTIES BOUND BY PBGC AGREEMENTS.—This subsection shall not apply to any plan if—

''(i) a person other than the employer obligated to contribute under the plan is, under the terms of an agreement with the Pension Benefit Guaranty Corporation, liable for any failure of the employer to meet its obligation to pay any minimum required contribution or termination liability with respect to the plan; and

''(ii) such person is not a financially-weak employer under paragraph (5).

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

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

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

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

''(A) FAILURE TO TIMELY MAKE REQUIRED INSTALLMENT.—

''(i) IN GENERAL.—In the case of a plan to which this paragraph applies, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points.

''(ii) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any defined benefit plan to which this section applies other than a plan which—

''(I) is a plan described in subsection (g)(2)(B)), or

''(II) had a funding shortfall of $1,000,000 or less for the preceding plan year.

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

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

''(I) the required installment, over

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

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

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

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

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

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

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

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

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

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

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

''(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

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

''(E) FISCAL YEARS AND SHORT YEARS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

''(ii) BASE AMOUNT.—

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

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

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

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

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

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

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

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

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

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

''(1) IN GENERAL.—In the case of a plan to which this subsection applies, if—

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

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

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

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan covered under section 4021 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

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

''(4) NOTICE OF FAILURE; LIEN.—

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

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

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

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

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

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

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

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

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

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

(a) LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

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

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

''(A) IN GENERAL.—Except as provided in paragraph (4), no amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(i) less than 80 percent, or

''(ii) would be less than 80 percent taking into account such amendment.

''(B) EXEMPTION.—Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303) equal to—

''(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the amendment, and

''(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

''(C) EXCEPTION FOR CERTAIN BENEFIT INCREASES.—Subparagraph (A) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

''(2) LIMITATIONS ON ACCELERATED BENEFIT DISTRIBUTIONS.—

''(A) IN GENERAL.—A defined benefit plan which is a single-employer plan shall provide that, with respect to any plan year—

''(i) if the plan's adjusted funded target liability percentage as of the valuation date for the preceding plan year was less than 60 percent and the preceding plan year is not otherwise in a prohibited period, the plan sponsor shall, in addition to any other contribution required under section 303, contribute for the current plan year and each succeeding plan year in the prohibited period with respect to the current plan year the amount (if any) which, when added to the portion of the minimum required contribution for the plan year described in subparagraphs (B) and (C) of section 303(a)(1), is sufficient to result in an adjusted funded target liability percentage for the plan year of 60 percent, and

''(ii) no prohibited payments will be made during a prohibited period.

''(B) PROHIBITED PAYMENT.—For purpose of this subsection—

''(i) IN GENERAL.—The term 'prohibited payment' means—

''(I) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)), to a participant or beneficiary whose annuity starting date (as defined in section 205(h)(2)) occurs during a prohibited period,

''(II) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(III) any other payment specified by the Secretary of the Treasury by regulations.

''(ii) EXCEPTION FOR CERTAIN PAYMENTS.—In the case of any prohibited period described in subparagraph (C)(i), the term 'prohibited payment' shall not include any payment if the amount of the payment does not exceed the lesser of—

''(I) 50 percent of the amount of the payment which could be made without regard to this subsection, or

''(II) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 205(g)) of the maximum guarantee with respect to the participant under section 4022.

The exception under this clause shall only apply once with respect to any participant, except that, for purposes of this sentence, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 206(d)(3)(K)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subclause (II) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 206(d)(3)(B)(i)) provides otherwise.

''(C) PROHIBITED PERIOD.—For purposes of subparagraph (A), the term 'prohibited period' means—

''(i) except as provided in subparagraph (D), if a plan sponsor is required to make the contribution for the current plan year under subparagraph (A), the period beginning on the 1st day of the plan year and ending on the last day of the 1st period of 2 consecutive plan years (beginning on or after such 1st day) for which the plan's adjusted funded target liability percentage was at least 60 percent,

''(ii) any period the plan sponsor is in bankruptcy, or

''(iii) any period during which the plan has a liquidity shortfall (as defined in section 303(j)(4)(E)(i)).

The prohibited period for purposes of clause (ii) shall not include any portion of a plan year (even if the plan sponsor is in bankruptcy during such period) which occurs on or after the date the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the plan's adjusted funded target liability percentage is at least 100 percent.

''(D) SATISFACTION OF REQUIREMENT BEFORE CLOSE OF PLAN YEAR.—If, before the close of the current plan year—

''(i) the plan sponsor makes the contribution required to be made under subparagraph (A), or

''(ii) the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the adjusted funded target liability percentage of the plan is at least 60 percent, this paragraph shall be applied as if no prohibited period had begun as of the beginning of such year and the plan shall, under rules described by the Secretary of the Treasury, restore any payments not made during the prohibited period in effect before the application of this paragraph.

''(3) LIMITATION ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—

''(A) IN GENERAL.—Except as provided in paragraph (4), a single-employer plan shall provide that all future benefit accruals under the plan shall cease during a severe funding shortfall period, but only to the extent the cessation of such accruals would have been permitted under section 204(g) if the cessation had been implemented by a plan amendment adopted immediately before the severe funding shortfall period.

''(B) SEVERE FUNDING SHORTFALL PERIOD.—For purposes of subparagraph (A), the term 'severe funding shortfall period' means in the case of a plan the adjusted funding target attainment percentage of which as of the valuation date of the plan for any plan year is less than 60 percent, the period—

''(i) beginning on the 1st day of the succeeding plan year, and

''(ii) ending on the date the plan's enrolled actuary certifies that the plan's adjusted funding target attainment percentage is at least 60 percent, and

''(C) OPPORTUNITY FOR INCREASED FUNDING.—For purposes of subparagraph (B), a plan shall not be treated as described in such subparagraph for a plan year if the plan's enrolled actuary certifies that the plan sponsor has before the end of the plan year contributed (in addition to any minimum required contribution under section 303) the amount sufficient to result in an adjusted funding target attainment percentage as of the valuation date for the plan year of 60 percent.

''(4) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED BENEFITS.—In the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and the plan sponsor and in effect before the beginning of the first day on which a limitation would otherwise apply under paragraph (1), (2), or (3)—

''(A) such limitations shall not apply to any amendment, prohibited payment, or accrual with respect to such plan, but

''(B) the plan sponsor shall contribute (in addition to any minimum required contribution under section 303) the amount sufficient to result in an adjusted funding target attainment percentage (as of the valuation date for the plan year in which any such limitation would otherwise apply) equal to the percentage necessary to prevent the limitation from applying.

''(5) RULES RELATING TO REQUIRED CONTRIBUTIONS.—

''(A) SECURITY MAY BE PROVIDED.—

''(i) IN GENERAL.—For purposes of this subsection, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of clause (ii) .

''(ii) FORM OF SECURITY.—The security required under clause (i) shall consist of—

''(I) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of this Act,

''(II) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

''(III) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

''(iii) ENFORCEMENT.—Any security provided under clause (i) may be perfected and enforced at any time after the earlier of—

''(I) the date on which the plan terminates,

''(II) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 303(j), or

''(III) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

''(iv) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary of the Treasury may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the funding target attainment percentage.

''(B) PREFUNDING BALANCE MAY NOT BE USED.—No prefunding balance under section 303(f) may be used to satisfy any required contribution under this subsection.

''(C) TREATMENT AS UNPAID MINIMUM REQUIRED CONTRIBUTION.—The amount of any required contribution which a plan sponsor fails to make under paragraph (1) or (3) for any plan year shall be treated as an unpaid minimum required contribution for purposes of subsection (j) and (k) of section 303 and for purposes of section 4971 of the Internal Revenue Code of 1986.

''(6) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

''(7) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month.

''(8) TREATMENT OF PLAN AS OF CLOSE OF PROHIBITED OR CESSATION PERIOD.—For purposes of applying this part—

''(A) OPERATION OF PLAN AFTER PERIOD.—Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of a period of limitation of payment or accrual of benefits under paragraph (2) or (3).

''(B) TREATMENT OF AFFECTED BENEFITS.—Nothing in this paragraph shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this subsection.

''(9) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'funding target attainment percentage' has the same meaning given such term by section 303(d)(2).

''(B) ADJUSTED FUNDED TARGET LIABILITY PERCENTAGE.—The term 'adjusted funded target liability percentage' means the funded target liability percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 303(d)(2) by the aggregate amount of purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall prescribe in regulations, which were made by the plan during the preceding 2 plan years.

''(10) YEARS BEFORE EFFECTIVE DATE.—No plan year beginning before 2007 shall be taken into account in determining whether this subsection applies to any plan year beginning after 2006.''.

(2) NOTICE REQUIREMENT.—

(A) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended—

(i) by redesignating subsection (j) as subsection (k); and

(ii) by inserting after subsection (i) the following new subsection:

''(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days—

''(1) after the plan has become subject to the restriction described in section 206(g)(2),

''(2) in the case of a plan to which section 206(g)(3) applies, after—

''(A) the date in the plan year described in section 206(g)(3)(B) on which the plan's enrolled actuary certifies that the plan's adjusted funding target attainment percentage for the plan year is less than 60 percent (or, if earlier, the date such percentage is deemed to be less than 60 percent under section 206(g)(7)), and

''(B) the first day of the severe funding shortfall period, and

''(3) at such other time as may be determined by the Secretary of the Treasury.

The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.''.

(B) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking ''section 302(b)(7)(F)(iv)'' and inserting ''sections 101(j) and 302(b)(7)(F)(iv)''.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2007, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.

(a) MISCELLANEOUS AMENDMENTS TO TITLE I.—Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking ''section 302(e)'' and inserting ''section 303(j)'';

(2) in section 103(d)(8)(B), by striking ''the requirements of section 302(c)(3)'' and inserting ''the applicable requirements of sections 303(h) and 304(c)(3)'';

(3) in section 103(d), by striking paragraph (11) and inserting the following:

''(11) If the current value of the assets of the plan is less than 70 percent of—

''(A) in the case of a single-employer plan, the funding target (as defined in section 303(d)(1)) of the plan, or

''(B) in the case of a multiemployer plan, the current liability (as defined in section 304(c)(6)(D)) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).'';

(4) in section 203(a)(3)(C), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(5) in section 204(g)(1), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(6) in section 204(i)(2)(B), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(7) in section 204(i)(3), by striking ''funded current liability percentage (within the meaning of section 302(d)(8) of this Act)'' and inserting ''funding target attainment percentage (as defined in section 303(d)(2))'';

(8) in section 204(i)(4), by striking ''section 302(c)(11)(A), without regard to section 302(c)(11)(B)'' and inserting ''section 302(b)(1), without regard to section 302(b)(2)'';

(9) in section 206(e)(1), by striking ''section 302(d)'' and inserting ''section 303(j)(4)'', and by striking ''section 302(e)(5)'' and inserting ''section 303(j)(4)(E)(i)'';

(10) in section 206(e)(3), by striking ''section 302(e) by reason of paragraph (5)(A) thereof'' and inserting ''section 303(j)(3) by reason of section 303(j)(4)(A)''; and

(11) in sections 101(e)(3), 403(c)(1), and 408(b)(13), by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—Title IV of such Act is amended—

(1) in section 4001(a)(13) (29 U.S.C. 1301(a)(13)), by striking ''302(c)(11)(A)'' and inserting ''302(b)(1)'', by striking ''412(c)(11)(A)'' and inserting ''412(c)(1)'', by striking ''302(c)(11)(B)'' and inserting ''302(b)(2)'', and by striking ''412(c)(11)(B)'' and inserting ''412(c)(2)'';

(2) in section 4003(e)(1) (29 U.S.C. 1303(e)(1)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(3) in section 4010(b)(2) (29 U.S.C. 1310(b)(2)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(4) in section 4062(c)(1) (29 U.S.C. 1362(c)(1)), by striking paragraphs (1), (2), and (3) and inserting the following:

''(1)(A) in the case of a single-employer plan, the sum of the shortfall amortization charge (within the meaning of section 303(c)(1) of this Act and 430(d)(1) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 303(c)(2) of this Act and section 430(d)(2) of such Code (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 302(c) of this Act and section 412(d) of such Code which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), or

''(B) in the case of a multiemployer plan, the outstanding balance of the accumulated funding deficiencies (within the meaning of section 304(a)(2) of this Act and section 431(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 302(c) of this Act or section 412(d) of such Code and for extensions of the amortization period under section 304(d) of this Act or section 431(d) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

''(2)(A) in the case of a single-employer plan, the sum of the waiver amortization charge (within the meaning of section 303(e)(1) of this Act and 430(e)(2) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 303(e)(3) of this Act and section 430(e)(3) of such Code, or

''(B) in the case of a multiemployer plan, the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 412(d) of such Code (if any), and

''(3) in the case of a multiemployer plan, the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304(d) of this Act or section 431(d) of such Code (if any);'';

(5) in section 4071 (29 U.S.C. 1371), by striking ''302(f)(4)'' and inserting ''303(k)(4)'';

(6) in section 4243(a)(1)(B) (29 U.S.C. 1423(a)(1)(B)), by striking ''302(a)'' and inserting ''304(a)'', and, in clause (i), by striking ''302(a)'' and inserting ''304(a)'';

(7) in section 4243(f)(1) (29 U.S.C. 1423(f)(1)), by striking ''303(a)'' and inserting ''302(c)'';

(8) in section 4243(f)(2) (29 U.S.C. 1423(f)(2)), by striking ''303(c)'' and inserting ''302(c)(3)''; and

(9) in section 4243(g) (29 U.S.C. 1423(g)), by striking ''302(c)(3)'' and inserting ''304(c)(3)''.

(c) AMENDMENTS TO REORGANIZATION PLAN NO. 4 OF 1978.—Section 106(b)(ii) of Reorganization Plan No. 4 of 1978 (ratified and affirmed as law by Public Law 98–532 (98 Stat. 2705)) is amended by striking ''302(c)(8)'' and inserting ''302(d)(2)'', by striking ''304(a) and (b)(2)(A)'' and inserting ''304(d)(1), (d)(2), and (e)(2)(A)'', and by striking ''412(c)(8), (e), and (f)(2)(A)'' and inserting ''412(d)(2) and 431(d)(1), (d)(2), and (e)(2)(A)''.

(d) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—Section 207 of such Act (29 U.S.C. 1057) is repealed.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2006.

SEC. 105. SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES.

(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by section 401 of this Act, this subtitle, and subtitle B shall not apply to plan years beginning before the earlier of—

(1) the first plan year for which the plan ceases to be an eligible cooperative plan, or

(2) January 1, 2017.

(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) and in applying section 4006(a)(3)(E)(iii) of such Act (as in effect before the amendments made by section 401) to an eligible cooperative plan for plan years beginning after December 31, 2006, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

(2) organizations which are—

(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act.

SEC. 106. TEMPORARY RELIEF FOR CERTAIN RESCUED PLANS.

(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a rescued plan as of such date, the amendments made by section 401 of this Act, this subtitle, and subtitle B shall not apply to plan years beginning before January 1, 2014.

(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), and in applying section 4006(a)(3)(E)(iii) of such Act (as in effect before the amendments made by section 401), to a rescued plan for plan years beginning after December 31, 2006, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

(c) RESCUED PLAN.—For purposes of this section, the term ''rescued plan'' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act and section 412 of such Code apply and—

(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of at least $100,000,000, but not greater than $150,000,000, and

(2) the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship.

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 111. MODIFICATIONS OF THE MINIMUM FUNDING STANDARDS.

(a) IN GENERAL.—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

''SEC. 412. MINIMUM FUNDING STANDARDS.

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

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

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

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

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

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for the plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

''(b) PLANS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan under the Employee Retirement Income Security Act of 1974—

''(A) the plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

''(B) the plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

''(2) EXCEPTIONS.—This section shall not apply to—

''(A) any profit-sharing or stock bonus plan,

''(B) any insurance contract plan described in subsection (g)(3),

''(C) any governmental plan (within the meaning of section 414(d)),

''(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

''(E) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

''(F) any plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

''(3) CERTAIN TERMINATED MULTIEMPLOYER PLANS.—This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 applies until the last day of the plan year in which the plan terminates (within the meaning of section 4041A(a)(2) of such Act).

''(c) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section and any required installments under section 430(j) shall be paid by any employer responsible for making the contribution to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

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

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

''(A) IN GENERAL.—If—

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

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

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

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

''(i) in the case of a single-employer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and ''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

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

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

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

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

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

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

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

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

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

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

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

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

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

''(ii) consider—

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

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

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

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than $1,000,000.

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

''(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

''(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.

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

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

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

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

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

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

''(6) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) other than the Pension Benefit Guaranty Corporation and in the case of a multiemployer plan, to each employer required to contribute to the plan under subsection (b)(1). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

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

''(7) RESTRICTION ON PLAN AMENDMENTS.—

''(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (e)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan amendment which—

''(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(ii) only repeals an amendment described in subsection (e)(2), or

''(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1 of the Internal Revenue Code of 1986.

''(e) MISCELLANEOUS RULES.—For purposes of this section—

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

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

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

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

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

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (d)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (d)(1) (or in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

''(3) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this paragraph if—

''(A) the plan is funded exclusively by the purchase of individual insurance contracts,

''(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective), ''(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

''(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

''(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

''(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which are determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.

''(4) CONTROLLED GROUP.—For purposes of this section and section 430, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2006.

SEC. 112. FUNDING RULES APPLICABLE TO SINGLE-EMPLOYER PENSION PLANS.

Subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended by adding at the end the following new part:

''PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATION

''SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS.

''(a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a defined benefit plan which is a single employer plan—

''(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is less than the funding target of the plan for the plan year, the sum of—

''(A) the target normal cost of the plan for the plan year,

''(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

''(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e); or

''(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by any such excess.

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

''(c) SHORTFALL AMORTIZATION CHARGE.—

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

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

''(A) DETERMINATION.—The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

''(B) SHORTFALL INSTALLMENT.—The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

''(C) SEGMENT RATES.—In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(3) SHORTFALL AMORTIZATION BASE.—For purposes of this section, the shortfall amortization base of a plan for a plan year is the excess (if any) of—

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

''(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

''(4) FUNDING SHORTFALL.—

''(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the funding shortfall of a plan for any plan year is the excess (if any) of—

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

''(ii) the value of plan assets of the plan (as reduced under subsection (f)(4)) for the plan year which are held by the plan on the valuation date.

''(B) TRANSITION RULE FOR AMORTIZATION OF FUNDING SHORTFALL.—

''(i) IN GENERAL.—Solely for purposes of applying paragraph (3) in the case of plan years beginning after 2006 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year.

''(ii) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

''(I) IN GENERAL.—Except as provided in subclause (II), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in 2008, and 100 percent for any succeeding plan year.

''(II) SMALL PLANS.—In the case of a plan described in subsection (g)(2)(B), the applicable percentage shall be determined in accordance with the following table:

''In the case of a plan year beginning in calendar year:	The applicable percentage is—
2007	92
2008	94
2009	96
2010	98.

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

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

''(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

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

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

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

''(e) WAIVER AMORTIZATION CHARGE.—

''(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

''(2) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

''(A) DETERMINATION.—The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

''(B) WAIVER INSTALLMENT.—The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

''(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(d).

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

''(f) USE OF PREFUNDING BALANCES TO SATISFY MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—A plan sponsor may credit any amount of a plan's prefunding balance for a plan year against the minimum required contribution for the plan year and the amount of the contributions an employer is required to make under section 412(c) for the plan year shall be reduced by the amount so credited. Any such amount shall be credited on the first day of the plan year.

''(2) PREFUNDING BALANCE.—

''(A) BEGINNING BALANCE.—The beginning balance of a prefunding balance maintained by a plan shall be zero, except that if a plan was in effect for a plan year beginning in 2006 and had a positive balance in the funding standard account under section 412(b) (as in effect for such plan year) as of the end of such plan year, the beginning balance for the plan for its first plan year beginning after 2006 shall be such positive balance.

''(B) INCREASES.—

''(i) IN GENERAL.—As of the first day of each plan year beginning after 2007, the prefunding balance of a plan shall be increased by the excess (if any) of—

''(I) the aggregate amount of employer contributions to the plan for the preceding plan year, over

''(II) the minimum required contribution for the preceding plan year.

''(ii) ADJUSTMENTS FOR INTEREST.—Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

''(iii) CERTAIN CONTRIBUTIONS DISREGARDED.—Any contribution which is required to be made under section 436 in addition to any contribution required under this section shall not be taken into account for purposes of clause (i).

''(C) DECREASES.—As of the first day of each plan year after 2007, the prefunding balance of a plan shall be decreased (but not below zero) by the amount of the balance credited under paragraph (1) against the minimum required contribution of the plan for the preceding plan year.

''(D) ADJUSTMENTS FOR INVESTMENT EXPERIENCE.—In determining the prefunding balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(3) LIMITATION FOR UNDERFUNDED PLANS.—

''(A) IN GENERAL.—If the ratio (expressed as a percentage) for any plan year which—

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

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

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 412(c) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subparagraph (B). Any contribution required by this subparagraph may not be reduced by any credit otherwise allowable under paragraph (1).

''(B) APPLICABLE AMOUNT.—The amount determined under this subparagraph for any plan year is the greater of—

''(i) the target normal cost of the plan for the plan year, or

''(ii) 25 percent of the minimum required contribution under subsection (a) for the plan year without regard to this subsection.

''(4) REDUCTION IN VALUE OF ASSETS.—Solely for purposes of applying subsections (a) and (c)(4)(A)(ii) in determining the minimum required contribution under this section, the value of the plan assets otherwise determined without regard to this paragraph shall be reduced by the amount of the prefunding balance under this subsection.

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

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

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

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

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

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

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

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

''(3) DETERMINATION OF VALUE OF PLAN ASSETS.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

''(B) AVERAGING ALLOWED.—A plan may determine the value of plan assets on the basis of any reasonable actuarial method of valuation providing for the averaging of fair market values, but only if such method—

''(i) is permitted under regulations prescribed by the Secretary, and

''(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 12th month preceding the valuation date and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month).

''(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of determining the value of assets under paragraph (3)—

''(A) PRIOR YEAR CONTRIBUTIONS.—If—

''(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

''(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2007, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

''(B) SPECIAL RULE FOR CURRENT YEAR CONTRIBUTIONS MADE BEFORE VALUATION DATE.—If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

''(i) such contributions, and

''(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

''(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

''(2) INTEREST RATES.—

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

''(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

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

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

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

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

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

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

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

''(D) CORPORATE BOND YIELD CURVE.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 12-month period ending with the month preceding such month, of yields on investment grade corporate bonds with varying maturities.

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

''(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve for such month and each of the rates determined under this paragraph for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2007 or 2008, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

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

''(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

''(3) MORTALITY TABLES.—

''(A) IN GENERAL.—Except as provided in subparagraphs (C) and (D), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Security and Transparency Act of 2005 and as revised from time to time under subparagraph (B).

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

''(C) SUBSTITUTE MORTALITY TABLE.—

''(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section during the 10-consecutive plan year period specified in the request. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of clause (ii).

''(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary determines that—

''(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II),

''(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience,

''(III) except as provided by the Secretary, such table will be used by all plans maintained by the plan sponsor and all members of any controlled group which includes the plan sponsor, and

''(IV) such table is significantly different from the table described in subparagraph (A).

''(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect for the first plan year in the 10-year period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii). The 180-day period shall be extended for any period during which the Secretary has requested information from the plan sponsor and such information has not been provided.

''(D) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding subparagraph (A)—

''(i) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(ii) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(iii) PERIODIC REVISION.—The Secretary shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

''(E) TRANSITION RULE.—Under regulations of the Secretary, any difference in present value resulting from any differences in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 412(l)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year.

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

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

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

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

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

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

''(i) the aggregate unfunded benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV of such Act (disregarding plans with no unfunded benefits) exceed $50,000,000; and

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

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

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

''(A) IN GENERAL.—In the case of a plan to which this subsection applies for a plan year, the funding target of the plan for the plan year is equal to the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B).

''(B) ADDITIONAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions described in this subparagraph are as follows:

''(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 7 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk target liability and at-risk target normal cost are being determined.

''(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of liabilities.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—In the case of a plan to which this subsection applies for a plan year, the target normal cost of the plan for such plan year shall be equal to the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B).

''(3) MINIMUM AMOUNT.—In no event shall—

''(A) the at-risk target liability be less than the target liability, as determined without regard to this subsection, or

''(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

''(4) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in at-risk status for a plan year if—

''(A) the plan is maintained by a financially-weak employer, and

''(B) the funding target attainment percentage for the plan year is less than 93 percent.

''(5) FINANCIALLY-WEAK EMPLOYER.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'financially-weak employer' means any employer if—

''(i) as of the valuation date for each of the years during a period of at least 3 consecutive plan years ending with the plan year—

''(I) the employer has an outstanding senior unsecured debt instrument which is rated lower than investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

''(II) if no such debt instrument has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer lower than investment grade, and

''(ii) at least 2 of the years during such period are deterioration years.

If an employer is treated as a financially-weak employer for any plan year, clause (ii) shall not apply in determining whether the employer is so treated for any succeeding plan year in any continuous period of plan years for which the employer is treated as a financially-weak employer.

''(B) CONTROLLED GROUP EXCEPTION.—If an employer treated as a financially-weak employer under subparagraph (A) is a member of a controlled group (as defined in section 412(e)(4)), the employer shall not be treated as a financially-weak employer if a significant member (as determined under regulations prescribed by the Secretary) of such group has an outstanding senior unsecured debt instrument that is rated as being investment grade by an organization described in subparagraph (A).

''(C) EMPLOYERS WITH NO RATINGS.—If—

''(i) an employer has no debt instrument described in subparagraph (A)(i) which was rated by an organization described in such subparagraph, and

''(ii) no such organization has made an issuer credit rating for such employer,

then such employer shall only be treated as a financially-weak employer to the extent provided in regulations prescribed by the Secretary.

''(6) DETERMINATION OF DETERIORATION YEAR.—For purposes of paragraph (5), the term 'deterioration year' means any year during the period described in paragraph (5)(A)(i) for which the rating described in subclause (I) or (II) of paragraph (5)(A)(i) by each organization is either—

''(A) lower than the lowest rating of the employer by such organization for a preceding year in such period, or

''(B) the lowest rating used by such organization.

''(7) YEARS BEFORE EFFECTIVE DATE.—For purposes of paragraphs (5) and (6), plan years beginning before 2007 shall not be taken into account.

''(8) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

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

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

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

''(B) IMPROVEMENT YEARS NOT TAKEN INTO ACCOUNT.—

''(i) IN GENERAL.—An improvement year shall not be taken into account in determining any consecutive period of plan years for purposes of subparagraph (A).

''(ii) APPLICATION OF SUBSECTION AFTER IMPROVEMENT YEAR ENDS.—Plan years immediately before and after an improvement year (or consecutive period of improvement years) shall be treated as consecutive for purposes of subparagraph (A).

''(iii) IMPROVEMENT YEAR.—For purposes of this subparagraph, the term 'improvement year' means any plan year for which any rating described in subclause (I) or (II) of paragraph (5)(A)(i) is higher than such rating for the preceding plan year.

''(C) TRANSITION PERCENTAGE.—For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

"If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

''(D) YEARS BEFORE EFFECTIVE DATE.—For purposes of this paragraph, plan years beginning before 2007 shall not be taken into account.

''(9) PLANS TO WHICH SUBSECTION APPLIES.—

''(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to any plan to which this section applies and which is in at-risk status for the plan year.

''(B) EXCEPTION FOR SMALL PLANS.—This subsection shall not apply to a plan for a plan year if the plan was described in subsection (g)(2)(B) for the preceding plan year, determined by substituting '500' for '100'.

''(C) EXCEPTION FOR PLANS MAINTAINED BY CERTAIN COOPERATIVES.—This subsection shall not apply to an eligible cooperative plan described in subparagraph (D).

''(D) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of subparagraph (C), a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

''(i) rural cooperatives (as defined in section 401(k)(7)(B) without regard to clause (iv) thereof), or

''(ii) organizations which are—

''(I) cooperative organizations described in section 1381(a) which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

''(II) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subclause (I).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act.

''(E) EXCEPTION FOR PLANS SECURED BY THIRD PARTIES BOUND BY PBGC AGREEMENTS.—This subsection shall not apply to any plan if—

''(i) a person other than the employer obligated to contribute under the plan is, under the terms of an agreement with the Pension Benefit Guaranty Corporation, liable for any failure of the employer to meet its obligation to pay any minimum required contribution or termination liability with respect to the plan; and

''(ii) such person is not a financially-weak employer under paragraph (5).

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

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

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

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

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

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

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

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

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

''(I) the required installment, over

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

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

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

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

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

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

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

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

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

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

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

''(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

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

''(E) FISCAL YEARS AND SHORT YEARS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

''(ii) BASE AMOUNT.—

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

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

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

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

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

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

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

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

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

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

''(1) IN GENERAL.—In the case of a plan to which this subsection applies, if—

''(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

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

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

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

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

''(4) NOTICE OF FAILURE; LIEN.—

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

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

''(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

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

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

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

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

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to rules relating to minimum funding standards) is amended by adding at the end the following new subpart:

''Subpart B—Limitations on Benefit Improvements by Single-Employer Plans

''Sec. 436. Funding-based limits on benefits and benefit accruals under single-employer plans.

''SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.

''(a) GENERAL RULE.—For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan shall be treated as meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), and (d).

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

''(1) IN GENERAL.—Except as provided in this section, no amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(A) less than 80 percent, or

''(B) would be less than 80 percent taking into account such amendment.

''(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

''(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

''(B) in the case of paragraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(3) EXCEPTION FOR CERTAIN BENEFIT INCREASES.—Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

''(c) LIMITATIONS ON ACCELERATED BENEFIT DISTRIBUTIONS.—

''(1) IN GENERAL.—The requirements of this subsection are met if the plan provides that, with respect to any plan year—

''(A) if the plan's adjusted funded target liability percentage as of the valuation date for the preceding plan year was less than 60 percent and the preceding plan year is not otherwise in a prohibited period, the plan sponsor shall, in addition to any other contribution required under section 430, contribute for the current plan year and each succeeding plan year in the prohibited period with respect to the current plan year the amount (if any) which, when added to the portion of the minimum required contribution for the plan year described in subparagraphs (B) and (C) of section 430(a)(1), is sufficient to result in an adjusted funded target liability percentage for the plan year of 60 percent, and

''(B) no prohibited payments will be made during a prohibited period.

''(2) PROHIBITED PAYMENT.—For purpose of this subsection—

''(A) IN GENERAL.—The term 'prohibited payment' means—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during a prohibited period,

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary by regulations.

''(B) EXCEPTION FOR CERTAIN PAYMENTS.—In the case of any prohibited period described in paragraph (3)(A), the term 'prohibited payment' shall not include any payment if the amount of the payment does not exceed the lesser of—

''(i) 50 percent of the amount of the payment which could be made without regard to this subsection, or

''(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

The exception under this subparagraph shall only apply once with respect to any participant, except that, for purposes of this sentence, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under clause (ii) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

''(3) PROHIBITED PERIOD.—For purposes of paragraph (1), the term 'prohibited period' means—

''(A) except as provided in paragraph (4), if a plan sponsor is required to make the contribution for the current plan year under paragraph (1), the period beginning on the 1st day of the plan year and ending on the last day of the 1st period of 2 consecutive plan years (beginning on or after such 1st day) for which the plan's adjusted funded target liability percentage was at least 60 percent,

''(B) any period the plan sponsor is in bankruptcy, or

''(C) any period during which the plan has a liquidity shortfall (as defined in section 430(j)(4)(E)(i)).

The prohibited period for purposes of subparagraph (B) shall not include any portion of a plan year (even if the plan sponsor is in bankruptcy during such period) which occurs on or after the date the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the plan's adjusted funded target liability percentage is at least 100 percent.

''(4) SATISFACTION OF REQUIREMENT BEFORE CLOSE OF PLAN YEAR.—If, before the close of the current plan year—

''(A) the plan sponsor makes the contribution required to be made under paragraph (1), or

''(B) the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the adjusted funded target liability percentage of the plan is at least 60 percent,

this subsection shall be applied as if no prohibited period had begun as of the beginning of such year and the plan shall, under rules described by the Secretary, restore any payments not made during the prohibited period in effect before the application of this paragraph.

''(d) LIMITATION ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—

''(1) IN GENERAL.—Except as provided in subsection (e), a single-employer plan shall provide that all future benefit accruals under the plan shall cease during a severe funding shortfall period, but only to the extent the cessation of such accruals would have been permitted under section 411(d)(6) if the cessation had been implemented by a plan amendment adopted immediately before the severe funding shortfall period.

''(2) SEVERE FUNDING SHORTFALL PERIOD.—For purposes of paragraph (1), the term 'severe funding shortfall period' means in the case of a plan the adjusted funding target attainment percentage of which as of the valuation date of the plan for any plan year is less than 60 percent, the period—

''(A) beginning on the 1st day of the succeeding plan year, and

''(B) ending on the date the plan's enrolled actuary certifies that the plan's funding target attainment percentage is at least 60 percent.

''(3) OPPORTUNITY FOR INCREASED FUNDING.—For purposes of paragraph (2)(A), a plan shall not be treated as described in such paragraph for a plan year if the plan's enrolled actuary certifies that the plan sponsor has before the end of the plan year contributed (in addition to any minimum required contribution under section 430) the amount sufficient to result in an adjusted funding target attainment percentage as of the valuation date for the plan year of 60 percent.

''(e) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED BENEFITS.—In the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and the plan sponsor and in effect before the beginning of the first day on which a limitation would otherwise apply under subsections (b), (c), or (d)—

''(1) such limitations shall not apply to any amendment, prohibited payment, or accrual with respect to such plan, but

''(2) the plan sponsor shall contribute (in addition to any minimum required contribution under section 430) the amount sufficient to result in a funding target attainment percentage (as of the valuation date for the plan year in which any such limitation would otherwise apply) equal to the percentage necessary to prevent the limitation from applying.

''(f) RULES RELATING TO REQUIRED CONTRIBUTIONS.—

''(1) SECURITY MAY BE PROVIDED.—

''(A) IN GENERAL.—For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B) .

''(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

''(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

''(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

''(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

''(C) ENFORCEMENT.—Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

''(i) the date on which the plan terminates,

''(ii) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

''(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

''(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the funding target attainment percentage.

''(2) PREFUNDING BALANCE MAY NOT BE USED.—No prefunding balance under section 430(f) may be used to satisfy any required contribution under this section.

''(3) TREATMENT AS UNPAID MINIMUM REQUIRED CONTRIBUTION.—The amount of any required contribution which a plan sponsor fails to make under subsection (b) or (d) for any plan year shall be treated as an unpaid minimum required contribution for purposes of subsection (j) and (k) of section 430 and for purposes of section 4971.

''(g) NEW PLANS.—Subsections (b) and (d) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(h) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under subsection (b), (c), or (d) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(2) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of subsections (b), (c), and (d), the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month.

''(i) TREATMENT OF PLAN AS OF CLOSE OF PROHIBITED OR CESSATION PERIOD.—For purposes of applying this part—

''(1) OPERATION OF PLAN AFTER PERIOD.—Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of a period of limitation of payment or accrual of benefits under subsection (c) or (d).

''(2) TREATMENT OF AFFECTED BENEFITS.—Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

''(j) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'funding target attainment percentage' has the same meaning given such term by section 430(d)(2).

''(2) ADJUSTED FUNDED TARGET LIABILITY PERCENTAGE.—The term 'adjusted funded target liability percentage' means the funded target liability percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall prescribe in regulations, which were made by the plan during the preceding 2 plan years.

''(k) SPECIAL RULES.—

''(1) BANKRUPTCY.—In the case of a plan sponsor during any period the plan is in bankruptcy—

''(A) subsection (b) shall be applied by substituting '100 percent' for '80 percent' each place it appears,

''(B) any exception under subsection (b) for any benefit increases pursuant to a collective bargaining agreement shall not apply, and

''(C) the exception under subsection (f) shall not apply for purposes of subsection (b).

''(2) YEARS BEFORE EFFECTIVE DATE.—No plan year beginning before 2007 shall be taken into account in determining whether this section applies to any plan year beginning after 2006.''.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2007, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan'' after ''section 501(a),'', and

(2) by inserting at the end the following new subsection:

''(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—For purposes of subsection (a)(1)(A)—

''(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

''(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

''(B) the sum of the minimum required contributions under section 430 for such plan years.

''(2) DETERMINATION OF AMOUNT.—

''(A) IN GENERAL.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

''(i) the sum of—

''(I) the funding target for the plan year,

''(II) the target normal cost for the plan year, and

''(III) the cushion amount for the plan year, over

''(ii) the value (determined under section 430(g)(2)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

''(B) SPECIAL RULE FOR CERTAIN EMPLOYERS.—If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

''(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

''(ii) the target normal cost for the plan year (as so determined).

''(3) CUSHION AMOUNT.—For purposes of paragraph (2)(A)(i)(III)—

''(A) IN GENERAL.—The cushion amount for any plan year is the sum of—

''(i) 80 percent of the funding target for the plan year, and

''(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account—

''(I) increases in compensation which are expected to occur in succeeding plan years, or

''(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

''(B) LIMITATIONS.—

''(i) IN GENERAL.—In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (l) and section 415(b) shall apply.

''(ii) EXPECTED INCREASES.—In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (j) or (l), take into account increases in the limitations which are expected to occur in succeeding plan years.

''(4) SPECIAL RULES FOR PLANS WITH 100 OR FEWER PARTICIPANTS.—

''(A) IN GENERAL.—For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

''(B) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(f)(4))) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

''(5) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

''(6) ACTUARIAL ASSUMPTIONS.—Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430.

''(7) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.''.

(b) EXCEPTION FROM LIMITATION ON DEDUCTION WHERE COMBINATION OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of such Code, as amended by this Act, is amended by adding at the end the following new clause:

''(iv) GUARANTEED PLANS.—In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The last sentence of section 404(a)(1)(A) of such Code is amended by striking ''section 412'' each place it appears and inserting ''section 431''.

(2) Section 404(a)(1)(B) of such Code is amended—

(A) by striking ''In the case of a plan'' and inserting ''In the case of a multiemployer plan'',

(B) by striking ''section 412(c)(7)'' each place it appears and inserting ''section 431(c)(6)'',

(C) by striking ''section 412(c)(7)(B)'' and inserting ''section 431(c)(6)(A)(ii)'',

(D) by striking ''section 412(c)(7)(A)'' and inserting ''section 431(c)(6)(A)(i)'', and

(E) by striking ''section 412'' and inserting ''section 431''.

(3) Section 404(a)(7)(A) of such Code, as amended by this Act, is amended—

(A) by adding at the end of subparagraph (A) the following new sentence: ''In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430.'', and

(B) by striking subparagraph (D) and inserting:

''(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(g)(3) shall be treated as a defined benefit plan.''.

(4) Section 404A(g)(3)(A) of such Code is amended by striking ''paragraphs (3) and (7) of section 412(c)'' and inserting ''paragraphs (3) and (6) of section 431(c)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

(1) Section 401(a)(29) of the Internal Revenue Code of 1986 is amended to read as follows:

''(29) BENEFIT LIMITATIONS ON PLANS IN AT-RISK STATUS.—In the case of a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.''.

(2) Section 401(a)(32) of such Code is amended—

(A) in subparagraph (A), by striking ''412(m)(5)'' each place it appears and inserting ''section 430(j)(4)'', and

(B) in subparagraph (C), by striking ''section 412(m)'' and inserting ''section 430(j)''.

(3) Section 401(a), as amended by this Act, is amended by striking paragraph (33) and by redesignating paragraphs (34) and (35) as paragraph (33) and (34).

(b) VESTING RULES.—Section 411 of such Code is amended—

(1) by striking ''section 412(c)(8)'' in subsection (a)(3)(C) and inserting ''section 412(d)(2)'',

(2) in subsection (b)(1)(F)—

(A) by striking ''paragraphs (2) and (3) of section 412(i)'' in clause (ii) and inserting ''subparagraphs (B) and (C) of section 412(e)(3)'', and

(B) by striking ''paragraphs (4), (5), and (6) of section 412(i)'' and inserting ''subparagraphs (D), (E), and (F) of section 412(e)(3)'', and

(3) by striking ''section 412(c)(8)'' in subsection (d)(6)(A) and inserting ''section 412(e)(2)''.

(c) MERGERS AND CONSOLIDATIONS OF PLANS.—Subclause (I) of section 414(l)(2)(B)(i) of such Code is amended to read as follows:

''(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under section 430 in the case of any other plan), over''.

(d) TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.—

(1) Section 420(e)(2) of such Code is amended to read as follows:

''(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

''(A) the lesser of—

''(i) the fair market value of the plan's assets (reduced by the prefunding balance determined under section 430(f)), or

''(ii) the value of plan assets as determined under section 430(g)(3) after reduction under section 430(f), over

''(B) 125 percent of the sum of the funding shortfall and the target normal cost determined under section 430 for such plan year.''.

(2) Section 420(e)(4) of such Code is amended to read as follows:

''(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(e) EXCISE TAXES.—

(1) IN GENERAL.—Subsections (a) and (b) of section 4971 of such Code are amended to read as follows:

''(a) INITIAL TAX.—If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

''(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

''(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

''(b) ADDITIONAL TAX.—If—

''(1) a tax is imposed under subsection (a)(1) on any unpaid required minimum contribution and such amount remains unpaid as of the close of the taxable period, or

''(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.''.

(2) Section 4971(c) of such Code is amended—

(A) by striking ''the last two sentences of section 412(a)'' in paragraph (1) and inserting ''section 431'', and

(B) by adding at the end the following new paragraph:

''(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

''(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.''.

(3) Section 4971(e)(1) of such Code is amended by striking ''section 412(b)(3)(A)'' and inserting ''section 412(a)(1)(A)''.

(4) Section 4971(f)(1) of such Code is amended—

(A) by striking ''section 412(m)(5)'' and inserting ''section 430(j)(4)'', and

(B) by striking ''section 412(m)'' and inserting ''section 430(j)''.

(5) Section 4972(c)(7) of such Code is amended by striking ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)'' and inserting ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))''.

(f) REPORTING REQUIREMENTS.—Section 6059(b) of such Code is amended—

(1) by striking ''the accumulated funding deficiency (as defined in section 412(a))'' in paragraph (2) and inserting ''the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431,'', and

(2) by striking paragraph (3)(B) and inserting:

''(B) the requirements for reasonable actuarial assumptions under section 430(h)(1) or 431(c)(3), whichever are applicable, have been complied with.''.

Subtitle C—Interest Rate Assumptions and Deductible Amounts for 2006

SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR TREASURY RATES.

(a) AMENDMENTS OF ERISA.—

(1) DETERMINATION OF RANGE.—Subclause (II) of section 302(b)(5)(B)(ii) of the Employee Retirement Income Security Act of 1974 is amended—

(A) by striking ''2006'' and inserting ''2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(2) DETERMINATION OF CURRENT LIABILITY.—Subclause (IV) of section 302(d)(7)(C)(i) of such Act is amended—

(A) by striking ''or 2005'' and inserting '', 2005, or 2006'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(3) PBGC PREMIUM RATE.—Subclause (V) of section 4006(a)(3)(E)(iii) of such Act is amended by striking ''2006'' and inserting ''2007''.

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) DETERMINATION OF RANGE.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''2006'' and inserting ''2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(2) DETERMINATION OF CURRENT LIABILITY.—Subclause (IV) of section 412(l)(7)(C)(i) of such Code is amended—

(A) by striking ''or 2005'' and inserting '', 2005, or 2006'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(c) PLAN AMENDMENTS.—Clause (ii) of section 101(c)(2)(A) of the Pension Funding Equity Act of 2004 is amended by striking ''2006'' and inserting ''2007''.

SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.

(a) IN GENERAL.—Clause (i) of section 404(a)(1)(D) of the Internal Revenue Code of 1986 (relating to special rule in case of certain plans) is amended by striking ''section 412(l)'' and inserting ''section 412(l)(8)(A), except that section 412(l)(8)(A) shall be applied for purposes of this clause by substituting '180 percent (130 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i).''

(b) CONFORMING AMENDMENT.—Section 404(a)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2005.

SEC. 123. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.

(a) IN GENERAL.—Subparagraph (C) of section 404(a)(7) of the Internal Revenue Code of 1986 (relating to limitation on deductions where combination of defined contribution plan and defined benefit plan) is amended by adding after clause (ii) the following new clause:

''(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

''(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2005.

TITLE II—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by this Act) is amended by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 302(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 of the Internal Revenue Code of 1986 in such manner as is determined by the Secretary of the Treasury.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

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

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

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

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

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

''(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

''(i) submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and ''(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary of the Treasury shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

''(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

''(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

''(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

''(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

''(iv) the notice required under paragraph (3)(A) has been provided.

''(2) ADDITIONAL EXTENSION.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

''(B) DETERMINATION.—The Secretary make grant an extension under subparagraph (A) if the Secretary determines that—

''(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

''(ii) the failure to permit such extension would—

''(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

''(II) be adverse to the interests of plan participants in the aggregate.

''(C) ACTION BY SECRETARY.—The Secretary of the Treasury shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

''(3) ADVANCE NOTICE.—

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

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) SHORTFALL FUNDING METHOD.—

(1) IN GENERAL.—A multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall be deemed approved by the Secretary of the Treasury under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(e)(1) of the Internal Revenue Code of 1986.

(2) CRITERIA.—A multiemployer pension plan meets the criteria of this clause if—

(A) the plan has not used the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method under paragraph (1); and

(B) the plan is not operating under an amortization period extension under section 304(d) of such Act and did not operate under such an extension during such 5-year period.

(3) SHORTFALL FUNDING METHOD DEFINED.—For purposes of this subsection, the term ''shortfall funding method'' means the shortfall funding method described in Treasury Regulations section 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

(4) BENEFIT RESTRICTIONS TO APPLY.—The benefit restrictions under section 302(c)(7) of such Act and section 412(d)(7) of such Code shall apply during any period a multiemployer plan is on the shortfall funding method pursuant to this subsection.

(5) USE OF SHORTFALL METHOD NOT TO PRECLUDE OTHER OPTIONS.—Nothing in this subsection shall be construed to affect a multiemployer plan's ability to adopt the shortfall funding method with the Secretary's permission under otherwise applicable regulations or to affect a multiemployer plan's right to change funding methods, with or without the Secretary's consent, as provided in applicable rules and regulations.

(c) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by this Act) is amended by inserting after the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

''(1) if the plan is in endangered status—

''(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

''(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

''(2) if the plan is in critical status—

''(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

''(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

''(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

''(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

''(A) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 304(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 304(d).

''(C) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value of the reasonably anticipated employer contributions for the current plan year,

''(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

''(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(D) A plan is described in this subparagraph if the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury—

''(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

''(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

''(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(i) IN GENERAL.—In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years, using reasonable actuarial estimates, assumptions, and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The projected present value of liabilities as of the beginning of such year shall be determined based on the actuarial statement required under section 103(d) with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

''(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

''(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

''(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary.

''(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the funding improvement plan—

''(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

''(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

''(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

''(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

''(i) such percentage as of the beginning of such period, plus

''(ii) 10 percent of the percentage under clause (i).

''(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

''(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

''(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

''(B) COORDINATION WITH CHANGES IN STATUS.—

''(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

''(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

''(C) PLANS IN ENDANGERED STATUS AT END OF PERIOD.—If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

''(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

''(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

''(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

''(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

''(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

''(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

''(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

''(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104.

''(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

''(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

''(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law, and

''(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

''(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

''(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

''(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

''(3) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the rehabilitation plan—

''(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 204(g)) have been reduced to the maximum extent permitted by law.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

''(3) REHABILITATION PLAN.—For purposes of this section—

''(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

''(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

''(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

''(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

''(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104.

''(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

''(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 304(d).

''(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

''(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

''(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

''(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

''(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

''(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

''(1) COMPLIANCE WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

''(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

''(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

''(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 204(g), the plan shall not pay—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)),

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary of the Treasury by regulations.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 203(e) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

''(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

''(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

''(h) NONBARGAINED PARTICIPATION.—

''(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

''(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

''(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

''(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means—

''(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

''(ii) in the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 304(c)(3).

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 304(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a).

''(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

''(9) PLAN SPONSOR.—In the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''.

(b) CAUSE OF ACTION TO COMPEL ADOPTION OF FUNDING IMPROVEMENT OR REHABILITATION PLAN.—Section 502(a) of the Employee Retirement Income Security Act of 1974 is amended by striking ''or'' at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ''; or'' and by adding at the end the following:

''(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305, if the plan sponsor has not adopted a funding improvement or rehabilitation plan under subsection (c) or (e) of that section by the deadline established in that section, by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan.''.

(c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h), and inserting after subsection (f) the following:

''(g) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—No tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This subsection shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan) and shall not apply if an excise tax is required to be imposed under this section by reason of a violation of such section 305.''.

(d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

(1) Section 302(b) of the Employee Retirement Income Security Act of 1974, as amended by this Act , is amended by adding at the end the following new paragraph:

''(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) and complies with such rehabilitation plan (and any modifications of the plan).''.

(2) Section 412(c) of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new paragraph:

''(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan).''.

(e) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2006.

SEC. 204. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION.

In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

(1) increases benefits, and

(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383),

the amendments made by sections 201, 202, 211, and 212 of this Act shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).

SEC. 205. WITHDRAWAL LIABILITY REFORMS.

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY OF INSOLVENT EMPLOYERS.—

(1) IN GENERAL.—Subsections (b) and (d) of section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) are repealed.

(2) CONFORMING AMENDMENTS.—Subsections (c) and (e) of section 4225 of such Act are redesignated as subsections (b) and (c), respectively.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting ''or to an entity or entities owned or controlled by the employer'' after ''to another location''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(c) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as added by this Act) is amended by inserting after section 430 the following new section:

"SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.

''(a) IN GENERAL.—For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 412(d)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) of such Act as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

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

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

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

''(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

''(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

''(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

''(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

''(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

''(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

''(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

''(iv) the notice required under paragraph (3)(A) has been provided.

''(2) ADDITIONAL EXTENSION.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

''(B) DETERMINATION.—The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

''(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

''(ii) the failure to permit such extension would—

''(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

''(II) be adverse to the interests of plan participants in the aggregate.

''(C) ACTION BY SECRETARY.—The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as amended by this Act) is amended by inserting after section 431 the following new section:

''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.

''(a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

''(1) if the plan is in endangered status—

''(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

''(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

''(2) if the plan is in critical status—

''(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

''(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

''(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

''(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

''(A) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

''(C) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value of the reasonably anticipated employer contributions for the current plan year,

''(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

''(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary—

''(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

''(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

''(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(i) IN GENERAL.—In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years, using reasonable actuarial estimates, assumptions, and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The projected present value of liabilities as of the beginning of such year shall be determined based on the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

''(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

''(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

''(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4) of such Act.

''(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary, and the Secretary of Labor.

''(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the funding improvement plan—

''(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

''(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

''(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

''(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

''(i) such percentage as of the beginning of such period, plus

''(ii) 10 percent of the percentage determined under clause (i).

''(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

''(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

''(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

''(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

''(B) COORDINATION WITH CHANGES IN STATUS.—

''(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

''(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

''(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

''(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

''(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

''(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

''(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

''(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

''(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

''(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

''(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

''(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

''(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

''(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

''(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

''(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

''(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

''(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

''(3) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the rehabilitation plan—

''(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

''(3) REHABILITATION PLAN.—For purposes of this section—

''(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

''(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

''(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

''(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

''(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

''(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

''(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 431(d).

''(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

''(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

''(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

''(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

''(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

''(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

''(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

''(1) COMPLIANCE WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

''(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

''(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

''(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(b)(1)(A)),

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary by regulations.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

''(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

''(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4971 to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

''(h) NONBARGAINED PARTICIPATION.—

''(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

''(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

''(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

''(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means—

''(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

''(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 412(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

''(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

''(9) PLAN SPONSOR.—In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

PART III—SUNSET OF FUNDING RULES

SEC. 216. SUNSET OF FUNDING RULES.

(a) REPORT.—Not later than December 31, 2011, the Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall conduct a study of the effect of the amendments made by this subtitle on the operation and funding status of multiemployer plans and shall report the results of such study, including any recommendations for legislation, to the Congress.

(b) MATTERS INCLUDED IN STUDY.—The study required under subsection (a) shall include—

(1) the effect of funding difficulties, funding rules in effect before the date of the enactment of this Act, and the amendments made by this subtitle on small businesses participating in multiemployer plans,

(2) the effect on the financial status of small employers of—

(A) funding targets set in funding improvement and rehabilitation plans and associated contribution increases,

(B) funding deficiencies,

(C) excise taxes,

(D) withdrawal liability,

(E) the possibility of alternatives schedules and procedures for financially-troubled employers, and

(F) other aspects of the multiemployer system, and

(3) the role of the multiemployer pension plan system in helping small employers to offer pension benefits.

(c) SUNSET.—

(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act, the provisions of, and the amendments made by, this subtitle shall not apply to plan years beginning after December 31, 2014, and the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 shall be applied to such plan years under the provisions of sections 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a funding improvement or rehabilitation plan under section 305 of such Act or 432 of such Code for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period.

(3) AMORTIZATION SCHEDULES.—In the case of any amount amortized under section 304(b) of such Act or 431 of such Code (as in effect after the amendments made by this subtitle) over any period beginning with a plan year beginning before January 1, 2015, such amount shall, in lieu of the amortization which would apply after the application of this subsection, continue to be amortized under such section 304 or 431 (as so in effect).

Subtitle B—Deduction and Related Provisions

SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER PLANS.

(a) INCREASE IN DEDUCTION.—Section 404(a)(1)(D) of the Internal Revenue Code of 1986, as amended by this Act, is amended to read as follows:

''(D) AMOUNT DETERMINED ON BASIS OF UNFUNDED CURRENT LIABILITY.—

''(i) IN GENERAL.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

''(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term 'unfunded current liability' means the excess (if any) of—

''(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

''(II) the value of the plan's assets determined under section 431(c)(2).''.

(b) EXCEPTION FROM LIMITATION ON DEDUCTION WHERE COMBINATION OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 404(a)(7)(C) of such Code, as amended by this Act, is amended by adding at the end the following new clause:

''(v) MULTIEMPLOYER PLANS.—In applying this paragraph, any multiemployer plan shall not be taken into account.''.

(2) CONFORMING AMENDMENT.—Section 404(a)(7)(A) of such Code is amended by striking the last sentence.

(c) EFFECTIVE DATES.—

(1) DEDUCTION LIMIT.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2006.

(2) EXCEPTION.—The amendments made by subsection (b) shall apply to years beginning after December 31, 2005.

SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MULTIEMPLOYER HEALTH PLAN.

(a) IN GENERAL.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(5) APPLICATION TO MULTIEMPLOYER PLAN.—In the case of any plan to which section 404(c) applies (or any successor plan primarily covering employees in the building and construction industry)—

''(A) the prohibition under subsection (a) on the application of this section to a multiemployer plan shall not apply, and

''(B) this section shall be applied to any such plan—

''(i) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

''(ii) in accordance with such modifications of this section (and the provisions of this title and the Employee Retirement Income Security Act of 1974 relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.''

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(3) Section 408(b)(13) of such Act (29 U.S.C. 1108(b)(13)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers made in taxable years beginning after December 31, 2004.

TITLE III—INTEREST RATE ASSUMPTIONS

SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 205(g)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)(A)) is amended by adding at the end the following new sentence: ''In the case of plan years beginning after 2006, the preceding sentence shall be applied by using the applicable yield curve method under subparagraph (C) rather than the applicable interest rate.''.

(2) APPLICABLE YIELD CURVE METHOD.—Section 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)) is amended by adding at the end the following new subparagraphs:

''(C) APPLICABLE YIELD CURVE METHOD.—For purposes of subparagraph (A), the term 'applicable yield curve method' means—

''(i) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, and 2009, and

''(ii) the yield curve method for years beginning after 2009.

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

''(i) IN GENERAL.—The yield curve method is a method under which present value is determined—

''(I) by using interest rates drawn from a yield curve which is prescribed by the Secretary of the Treasury and which reflects the yield on high-quality corporate bonds with varying maturities, and

''(II) by matching the timing of the expected benefit payments under the plan to the interest rates on such yield curve.

''(ii) PUBLICATION.—Each month the Secretary of the Treasury shall publish any yield curve prescribed under this subparagraph which shall apply to plan years beginning in such month and such yield curve shall be based on average interest rates for business days occurring during the 3 preceding months.

''(E) PHASE-IN YIELD CURVE METHOD.—

''(i) IN GENERAL.—Present value determined under the phase-in yield curve method shall be equal to the sum of—

''(I) the applicable percentage of such amount determined under the yield curve method described in subparagraph (D), and

''(II) the product of such amount determined by using the applicable interest rate and a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 25 percent for plan years beginning in 2007, 50 percent for plan years beginning in 2008, and 75 percent for plan years beginning in 2009.''.

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 (relating to determination of present value) is amended by adding at the end the following new sentence: ''In the case of plan years beginning after 2006, the preceding sentence shall be applied by using the applicable yield curve method under subparagraph (C) rather than the applicable interest rate.''

(2) APPLICABLE YIELD CURVE METHOD.—Section 417(e) of such Code is amended by adding at the end the following new subparagraphs:

''(C) APPLICABLE YIELD CURVE METHOD.—For purposes of subparagraph (A), the term 'applicable yield curve method' means—

''(i) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, and 2009, and

''(ii) the yield curve method for years beginning after 2009.

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

''(i) IN GENERAL.—The yield curve method is a method under which present value is determined—

''(I) by using interest rates drawn from a yield curve which is prescribed by the Secretary and which reflects the yield on high-quality corporate bonds with varying maturities, and

''(II) by matching the timing of the expected benefit payments under the plan to the interest rates on such yield curve.

''(ii) PUBLICATION.—Each month the Secretary shall publish any yield curve prescribed under this subparagraph which shall apply to plan years beginning in such month and such yield curve shall be based on average interest rates for business days occurring during the 3 preceding months.

''(E) PHASE-IN YIELD CURVE METHOD.—

''(i) IN GENERAL.—Present value determined under the phase-in yield curve method shall be equal to the sum of—

''(I) the applicable percentage of such amount determined under the yield curve method described in subparagraph (D), and

''(II) the product of such amount determined by using the applicable interest rate and a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 25 percent for plan years beginning in 2007, 50 percent for plan years beginning in 2008, and 75 percent for plan years beginning in 2009.''.

(c) SPECIAL RULE FOR PLAN AMENDMENTS.—A plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(6) of the Internal Revenue Code of 1986 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of the amendments made by this section.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

(a) IN GENERAL.—Clause (ii) of section 415(b)(2)(E) of the Internal Revenue Code of 1986 is amended to read as follows:

''(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), clause (i) shall be applied by substituting '5.5 percent' for '5 percent'.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2005.

SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED DEFERRED COMPENSATION PLANS BY EMPLOYERS MAINTAINING UNDERFUNDED OR TERMINATED SINGLE-EMPLOYER PLANS.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Part 3 of subtitle A of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081 et seq.), as amended by this Act, is amended by adding at the end the following new section:

''NOTICE OF FUNDING OF NONQUALIFIED DEFERRED COMPENSATION PLANS

''SEC. 306. (a) NOTICE AND ACCESS.—

''(1) NOTICE RELATING TO RESTRICTED PERIOD.—The plan administrator of a defined benefit plan which is a single-employer plan shall notify each plan sponsor of the plan within a reasonable period of time after the occurrence of an event which results in a restricted period with respect to the plan. Such notice shall include information—

''(A) as to the duration of the restricted period, and

''(B) the restrictions under section 409A(b)(3) of the Internal Revenue Code of 1986 which apply during the restricted period to the plan sponsor and any member of a controlled group which includes such sponsor.

''(2) NOTICE OF EXISTENCE OF, AND TRANSFERS TO, NONQUALIFIED DEFERRED COMPENSATION PLANS.—

''(A) INITIAL NOTICE.—Within 30 days of receipt of a notice under paragraph (1), each plan sponsor shall notify the plan administrator of the plan described in paragraph (1)—

''(i) of nonqualified deferred compensation plans maintained by the plan sponsor or any member of a controlled group which includes such sponsor, and

''(ii) the amount of any assets transferred or otherwise reserved by the plan sponsor or such member in violation of section 409A(b)(3) of such Code during any portion of the restricted period occurring on or before the date the plan sponsor provides such notice.

''(B) ADDITIONAL NOTICES.—If, after the date on which notice is provided under subparagraph (A) and during any portion of the remaining restricted period specified in the notice provided under paragraph (1), the plan sponsor of a plan described in paragraph (1) or a member of a controlled group which includes such sponsor—

''(i) transfers or reserves assets in violation of section 409A(b)(3) of such Code, or

''(ii) establishes a new nonqualified deferred compensation plan,

the plan sponsor shall notify the plan administrator of the plan described in paragraph (1) of such transfer, reservation, or establishment within 3 days of the date of such action.

''(3) ACCESS TO FINANCIAL DATA.—Any fiduciary of the plan shall have access to the financial records of a plan sponsor or any member of a controlled group which includes such sponsor to determine if assets were transferred or otherwise reserved in violation of section 409A(b)(3) of such Code.

''(4) FORM AND MANNER.—The Secretary may prescribe the form and manner of a notice required under this section. Such a notice shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient.

''(b) RESTRICTED PERIOD.—For purposes of this section, the term 'restricted period' means, with respect to any plan described in subsection (a)(1)—

''(1) any period—

''(A) beginning on the first day of a plan year following a plan year for which the plan's adjusted funding target attainment percentage (as defined in section 303) was less than 60 percent (determined as of the close of such year), and

''(B) ending on the last day of the first period of 2 consecutive plan years (beginning on or after such first day) for which such percentage was at least 60 percent,

''(2) any period the plan sponsor is in bankruptcy, and

''(3) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041).

In the case of a plan which is in at-risk status, paragraph (1) shall be applied by substituting '80 percent' for '60 percent' each place it appears.

''(c) NONQUALIFIED DEFERRED COMPENSATION PLAN.—For purposes of this section—

''(1) IN GENERAL.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

''(A) a qualified employer plan, and

''(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

''(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) of the Internal Revenue Code of 1986 (without regard to subparagraph (A)(iii)),

''(B) any eligible deferred compensation plan (within the meaning of section 457(b)) of such Code, and

''(C) any plan described in section 415(m) of such Code.

''(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

''(d) OTHER DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE COVERED EMPLOYEE.—

''(A) IN GENERAL.—The term 'applicable covered employee' mean any—

''(i) covered employee of a plan sponsor,

''(ii) covered employee of a member of a controlled group which includes the plan sponsor, and

''(iii) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

''(B) COVERED EMPLOYEE.—The term 'covered employee' has the meaning given such term by section 162(m)(3) of the Internal Revenue Code of 1986.

''(2) CONTROLLED GROUP.—The term 'controlled group' has the meaning given such term by section 302(d)(3).''.

(2) ENFORCEMENT.—

(A) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act (29 U.S.C. 1132(a)), as amended by this Act, is amended—

(i) by striking ''or'' at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ''; or'', and by adding at the end the following new paragraph:

''(11) by a fiduciary of a defined benefit plan which is a single-employer plan against—

''(A) a plan sponsor, a member of a controlled group which includes the plan sponsor, an applicable covered employee, or a person holding assets which are part of a nonqualified deferred compensation plan to recover on behalf of the plan—

''(i) assets which were set aside or transferred in violation of section 409A(b)(3) of the Internal Revenue Code of 1986 (and any earnings properly allocable to the assets); or

''(ii) amounts equivalent to the assets and earnings described in clause (i); or

''(B) a plan sponsor, or a member of a controlled group which includes the plan sponsor, to compel the production of records the fiduciary is entitled to under section 306.''; and

(ii) by adding at the end the following new flush sentence:

''For purposes of paragraph (11), any term used in such paragraph which is also used in section 306 shall have the meaning given such term by section 306.''.

(B) AWARDING OF FEES.—Section 502(g) of such Act (29 U.S.C. 1132(g)) is amended by adding at the end the following new paragraph:

''(3) ACTIONS TO RECOVER ASSETS TRANSFERRED TO NONQUALIFIED DEFERRED COMPENSATION PLANS.—If, in any action under subsection (a)(11) by a fiduciary for or on behalf of a plan to enforce section 306 of this Act and section 409A(b)(3), a judgment is awarded in favor of the plan, the court may, in addition to any other amount, award the plan reasonable attorney's fees and costs of the action, to be paid by the defendant''.

(3) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 306. Restrictions on funding of nonqualified deferred compensation plans.''.

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYERS OF UNDERFUNDED OR TERMINATED DEFINED BENEFIT PLANS.—During any restricted period—

''(A) a plan sponsor of a defined benefit plan which is a single-employer plan, or

''(B) any member of a controlled group which includes such sponsor,

shall not directly or indirectly transfer assets, or directly or indirectly otherwise reserve assets, in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member. Any assets transferred or reserved in violation of the preceding sentence shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. For purposes of this paragraph, any term used in this paragraph which is also used in section 306 of the Employee Retirement Income Security Act of 1974 shall have the meaning given such term by such section.''.

(2) CONFORMING AMENDMENTS.—Paragraphs (4) and (5) of section 409A(b) of such Code, as redesignated by subsection (a) of this subsection, are each amended by striking ''paragraph (1) or (2)'' each place it appears and inserting ''paragraph (1), (2), or (3)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or other reservation of assets after December 31, 2006.

SEC. 304. MODIFICATION OF PENSION FUNDING REQUIREMENTS FOR PLANS SUBJECT TO CURRENT TRANSITION RULE.

(a) PLAN YEAR BEFORE NEW FUNDING RULES.—Section 769(c)(3) of the Retirement Protection Act of 1994, as added by section 201 of the Pension Funding Equity Act of 2004, is amended by striking ''and 2005'' and inserting '', 2005, and 2006''.

(b) PLAN YEARS AFTER NEW FUNDING RULES.—

(1) IN GENERAL.—In the case of a plan that—

(A) was not required to pay a variable rate premium for the plan year beginning in 1996,

(B) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor), and

(C) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after 2006.

(2) MODIFIED RULES.—The rules described in this subsection are as follows:

(A) For purposes of—

(i) determining unfunded benefits under section 4006(a)(3)(E)(ii) of the Employee Retirement Income Security Act of 1974, and

(ii) determining any present value or making any computation under section 412 and section 430 of the Internal Revenue Code of 1986 and sections 302 and 303 of such Act,

the mortality table shall be the mortality table used by the plan.

(B) Notwithstanding section 303(f)(4) of such Act or 430(f)(4) of such Code, for purposes of section 303(c)(4)(A)(ii) of such Act and 430(c)(4)(A)(ii) of such Code, the value of plan assets shall not be reduced by the amount of the prefunding balance if, pursuant to a binding written agreement with the Pension Benefit Guaranty Corporation entered into before January 1, 2006, the prefunding balance is not available to reduce the minimum required contribution for the plan year.

(3) DEFINITIONS.—Any term used in this section which is also used in section 303 of such Act or section 430 of such Code shall have the meaning provided such term in such section.

(4) CONFORMING AMENDMENT.—Section 769 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after 2006.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

SEC. 401. INCREASES IN PBGC PREMIUMS.

(a) FLAT-RATE PREMIUMS.—

(1) IN GENERAL.—Section 4006(a)(3)(A)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended to read as follows:

''(i) in the case of a single-employer plan, an amount equal to—

''(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

''(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (H),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;''.

(2) AMOUNT OF PREMIUM AFTER 2005.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)), as amended by sections 406 and 407, is amended by adding at the end the following:

''(H) AMOUNT OF PREMIUM.—

''(i) IN GENERAL.—The amount determined under this subparagraph is the greater of $30 or in the case of plan years beginning after December 31, 2006, the adjusted amount determined under clause (ii).

''(ii) ADJUSTED AMOUNT.—The adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

''(I) the contribution and benefit base (determined under section 230 of the Social Security Act) in effect in the calendar year in which the plan year begins, to

''(II) the contribution and benefit base in effect in 2006.

''(iii) ROUNDING.—If the amount determined under clause (ii) is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.''.

(b) RISK-BASED PREMIUMS.—

(1) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act is amended by striking clauses (iii) and (iv) and inserting the following:

''(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term 'unfunded benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)) if the value of plan assets of the plan were equal to the fair market value of such assets.

''(II) The interest rate used in valuing benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D) were applied by using the yields on investment grade corporate bonds with varying maturities rather than the average of such yields for a 12-month period.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to plan years beginning after 2006.

(c) FLAT-RATE PREMIUM ADJUSTMENT.—

(1) IN GENERAL.—Beginning in 2011, and every 5 years thereafter, the Board of Directors of the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act (29 U.S.C. 1301 et seq.) shall submit to Congress a report that describes any recommendations for adjusting the premium rate payable to the Corporation described under section 4006(a)(3)(A)(i) of such Act (as amended by subsection (a)).

(2) CONSIDERATIONS.—In developing the report described under paragraph (1), the Corporation shall consider—

(A) the national average wage index (as defined in section 209(k)(1) of the Social Security Act (42 U.S.C. 409(k)(1)));

(B) the finances of the Corporation as of the date of such report and an actuarial evaluation of the expected operations and status of the funds established under section 4005 of such title IV (29 U.S.C. 1305) for the 5 years succeeding such date;

(C) the impact of any increases in such premium rate on plan sponsors subject to such title IV; and

(D) such other factors determined relevant by the Corporation.

SEC. 402. AUTHORITY TO ENTER ALTERNATIVE FUNDING AGREEMENTS TO PREVENT PLAN TERMINATIONS.

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—

(1) DISTRESS TERMINATIONS.—Section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) is amended by adding at the end the following:

''(4) ALTERNATIVE FUNDING AGREEMENTS.—

''(A) IN GENERAL.—If the corporation determines that—

''(i) a plan meets the requirements for a distress termination under this subsection without regard to an alternative funding agreement under section 4047(a), and

''(ii) the termination of the plan would not be necessary if such an agreement were entered into,

the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into such an agreement with the contributing sponsors under the plan.

''(B) EARLY ACTION INITIATIVES.—Subject to the limitations in subsection (a)(3), if—

''(i) the corporation determines that it is reasonable to believe that a plan may be subject to a distress termination within 6 months unless action is taken, the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into an alternative funding agreement under section 4047(a); and

''(ii) the corporation, upon the request of the contributing sponsor of a plan or other person, determines that it is reasonable to believe that a plan may be subject to a distress termination within 2 years unless action is taken, the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into an alternative funding agreement under section 4047(a).''.

(2) INVOLUNTARY TERMINATIONS.—Section 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342) is amended by adding at the end the following:

''(i) ALTERNATIVE FUNDING AGREEMENTS.—If—

''(1) the corporation determines that it is reasonable to believe that a plan will meet the requirements for an involuntary termination under this section without regard to an alternative funding agreement under section 4047(a) within 6 months unless action is taken, or

''(2) the corporation, upon the request of the contributing sponsor of a plan or other person, determines that it is reasonable to believe that a plan may be subject to an involuntary termination within 2 years unless action is taken,

and such a termination would not be necessary if such an agreement is entered into, the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into an alternative funding agreement under section 4047(a).''.

(b) ALTERNATIVE FUNDING SCHEDULES TO PREVENT PLAN TERMINATION.—

(1) IN GENERAL.—Section 4047 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1347) is amended by—

(A) striking the section heading and all that follows though ''Whenever'' and inserting—

''SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PREVENT TERMINATION; RESTORATION OF TERMINATED PLANS.

''(a) ALTERNATIVE FUNDING AGREEMENTS.—

''(1) IN GENERAL.—If the requirements of section 4041(c)(4) or 4042(i) are met with respect to any plan, the Secretary of the Treasury, in consultation with the corporation, may enter into an alternative funding agreement with the contributing sponsors under the plan that meets the requirements of this subsection.

''(2) OTHER REQUIREMENTS.—An alternative funding agreement may be entered into by the Secretary of the Treasury, in consultation with corporation, only if—

''(A) such Secretary finds the agreement to be in the best interests of the participants and beneficiaries; and

''(B) the agreement meets the requirements set forth by such Secretary in regulations.

''(3) ALTERNATIVE FUNDING AGREEMENT.—

''(A) IN GENERAL.—An agreement meets the requirements of this subsection if the agreement—

''(i) provides for an additional amortization schedule for a period not to exceed 10 years;

''(ii) requires the plan to pay at the time the agreement is entered into any professional fees or other expenses incurred by the Secretary of the Treasury or the corporation in connection with the agreements,

''(iii) requires approval by the corporation before the contributing sponsor establishes or maintains any other defined benefit plan other than any multiemployer plan that covers a substantial number of employees who are covered by the plan subject to the agreement or who perform substantially the same type of work with respect to the same business operations as employees covered by such plan, and

''(iv) provides for a termination date, or a schedule of termination dates, for the purpose of the guarantee under section 4022, to apply if a plan terminates during the period that the agreement is in effect.

''(B) OTHER CONDITIONS.—Notwithstanding any other provision of this Act, an agreement meeting the requirements of this subsection may provide—

''(i) for restrictions on, or the elimination of, future accruals, but only to the extent that such restrictions or eliminations would have been permitted under section 204(g) or section 411(d)(6) of the Internal Revenue Code of 1986 if they had been implemented by a plan amendment adopted immediately before the effective date of the agreement,

''(ii) that the contributing sponsors will provide security or other collateral in such form and amount as specified in the agreement,

''(iii) conditions under which the plan could be terminated in a standard termination under section 4041(b) or conditions under which accruals to which clause (i) applies could resume in the future, and

''(iv) for such other terms and conditions as the Secretary of the Treasury, in consultation with the corporation, determines necessary to protect the interests of the corporation.

''(C) EMPLOYEE REQUIREMENTS.—

''(i) IN GENERAL.—An agreement meets the requirements of this subsection only if—

''(I) at least 60 days before the agreement is to take effect the contributing sponsors notify affected parties (other than the corporation) of the terms of the agreement and its effect on such parties, and

''(II) each employee organization representing participants in the plan approves the agreement before it takes effect.

''(ii) FORM AND MANNER OF NOTICE.—The notice under clause (i) shall be written in a manner calculated to be understood by the average plan participant and may be provided to a person designated, in writing, by the person to which it would otherwise be provided. Such notice may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

''(4) COORDINATION WITH MINIMUM FUNDING REQUIREMENTS.—Any alternative funding schedule under an agreement meeting the requirements under this subsection shall supersede the minimum funding requirements of this Act and the Internal Revenue Code of 1986. For purposes of applying this Act or such Code, any contribution required under such schedule shall be treated in the same manner as contributions required under section 302 of this Act and section 412 of such Code.

''(b) RESTORATION OF TERMINATED PLANS.—Whenever''.

(2) CONFORMING AMENDMENT.—The table of contents for title IV of such Act is amended by striking the item relating to section 4047 and inserting the following:

''4047. Alternative funding schedules to prevent terminations; restoration of terminated plans.''.

(c) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a) of the Internal Revenue Code of 1986, as amended by sections 115 and 701 of this Act, is amended by inserting after paragraph (35) the following new paragraph:

''(36) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

''(A) an alternative funding agreement described in section 4047(a) of the Employee Retirement Income Security Act of 1974 is in effect with respect to any plan, and

''(B) the plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under this subsection unless all benefit obligations of the plan to which the alternative funding agreement applies have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the plan to which the alternative funding agreement applies and any employee who performs substantially the same type of work with respect to the same business operations as an employee covered by such plan.''.

(2) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(iii) PLANS SUBJECT TO ALTERNATIVE FUNDING AGREEMENTS.—This paragraph shall not apply to any plan for a plan year if an alternative funding agreement described in section 4047(a) of the Employee Retirement Income Security Act of 1974 is in effect for such year.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.

(a) IN GENERAL.—If an election is made to have this section apply to an eligible plan—

(1) in the case of any applicable plan year beginning before January 1, 2007, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (d) for the plan for the plan year, and

(2) in the case of any applicable plan year beginning on or after January 1, 2007, the minimum required contribution determined under sections 303 of such Act and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (d) for the plan for the plan year.

(b) ELIGIBLE PLAN.—For purposes of this section—

(1) IN GENERAL.—The term ''eligible plan'' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act and 412 of such Code applies—

(A) which is sponsored by an employer which is a commercial passenger airline, and

(B) with respect to which the requirements of paragraphs (2) and (3) are met.

(2) ACCRUAL RESTRICTIONS.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter, the plan provides that—

(A) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act, of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

(B) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—The requirements of this paragraph are met if no applicable benefit increase (as defined in section 436(b)(3) of such Code and section 305(b)(3) of such Act, but determined without regard to subparagraph (B) or (C) thereof) takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

(c) ELECTIONS AND RELATED TERMS.—

(1) IN GENERAL.—A plan sponsor shall make the election under subsection (a) at such time and in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

(2) YEARS FOR WHICH ELECTION MADE.—

(A) IN GENERAL.—The plan sponsor may select the first plan year to which the election under subsection (a) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

(B) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under subsection (a) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

(3) APPLICABLE PLAN YEAR.—The term ''applicable plan year'' means each plan year to which the election under subsection (a) applies under paragraph (1).

(d) MINIMUM REQUIRED CONTRIBUTION.—

(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance as of the first day of the first of such years under section 303(f) of such Act and section 430(f) of such Code shall be zero.

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

(A) UNFUNDED LIABILITY.—The term ''unfunded liability'' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) AMORTIZATION PERIOD.—The term ''amortization period'' means the 14-plan year period beginning with the first applicable plan year.

(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section, shall apply,

(B) the rate of interest under section 302(b) of such Act and section 412(b) of such Code, as so in effect, shall be used for all calculations requiring an interest rate, and

(C) the value of plan assets shall be equal to their fair market value.

(e) FUNDING STANDARD ACCOUNT AND PREFUNDING BALANCE.—Any charge or credit in the funding standard account under section 302 of such Act or section 412 of such Code, and any prefunding balance under section 303 of such Act or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

(f) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a)(35) of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following: ''This paragraph shall also apply to any plan during any period during which an amortization schedule under section 403 of the Pension Security and Transparency Act of 2005 is in effect.''

(2) PBGC LIABILITY LIMITED.—Section 4022 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following new subsection:

''(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN FUNDING REQUIREMENTS.—If any plan makes an election under section 403 of the Pension Security and Transparency Act of 2005, then this section and section 4044(a)(3) shall be applied by treating the first day of the first applicable plan year as the termination date of the plan.''.

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iii) of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following new sentence: ''This clause shall also apply to any plan for a plan year if an election under section 403 of the Pension Security and Transparency Act of 2005 is in effect for such year.''

(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

SEC. 404. LIMITATION ON PBGC GUARANTEE OF SHUTDOWN AND OTHER BENEFITS.

(a) IN GENERAL.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)) is amended by adding at the end the following:

''(8) If a benefit is payable by reason of—

''(A) a plant shutdown or similar event; or

''(B) any event other than attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability,

this section shall be applied as if a plan amendment had been adopted on the date such event occurred that provides for the payment of such benefit.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to benefits that become payable as a result of a plant shutdown or other similar event, as such terms are used in the amendment made by subsection (a), that occurs after July 26, 2005.

SEC. 405. RULES RELATING TO BANKRUPTCY OF EMPLOYER.

(a) GUARANTEE.—Section 4022 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322), as amended by this Act, is amended by adding at the end the following:

''(i) BANKRUPTCY FILING SUBSTITUTED FOR TERMINATION DATE.—If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date, then this section shall be applied by treating the date such petition was filed as the termination date of the plan.''.

(b) ALLOCATION OF ASSETS AMONG PRIORITY GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344) is amended by adding at the end the following:

''(e) BANKRUPTCY FILING SUBSTITUTED FOR TERMINATION DATE.—If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date, then subsection (a)(3) shall be applied by treating the date such petition was filed as the termination date of the plan.''.

(c) EFFECTIVE DATE.—The amendments made this section shall apply with respect to proceedings initiated under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, on or after the date that is 30 days after the date of enactment of this Act.

SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting ''other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),'' after ''single-employer plan,'',

(2) in clause (iii), by striking the period at the end and inserting '', and'', and

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

''(v) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.''

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee

Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

''(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

''(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

''(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans first effective after December 31, 2005.

SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this Act, is amended by adding at the end the following new clause:

''(iv) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

''(I) 0 percent, for the first plan year.

''(II) 20 percent, for the second plan year.

''(III) 40 percent, for the third plan year.

''(IV) 60 percent, for the fourth plan year.

''(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.''

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), is amended—

(1) by striking ''The'' in subparagraph (E)(i) and inserting ''Except as provided in subparagraph (G), the'', and

(2) by inserting after subparagraph (F) the following new subparagraph:

''(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

''(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined by taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.''

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans first effective after December 31, 2005.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2005.

SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking ''(b)'' and inserting ''(b)(1)'', and

(2) by inserting at the end the following new paragraph:

''(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).''

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

''(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(i) owns the entire interest in an unincorporated trade or business,

''(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

''(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under section 414(c) of such Code.

''(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

''(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

''(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.''

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking ''section 4022(b)(5)'' and inserting ''section 4022(b)(5)(B)''.

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended—

(A) by striking ''(5)'' in paragraph (2) and inserting ''(4), (5),'', and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.''

(c) CONFORMING AMENDMENTS.—

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended—

(A) in subsection (b)(9), by striking ''as defined in section 4022(b)(6)'', and

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

''(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(1) owns the entire interest in an unincorporated trade or business,

''(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

''(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under section 414(c) of such Code.''

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking ''section 4022(b)(6)'' and inserting ''section 4021(d)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2005, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2006.

SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BENEFITS ATTRIBUTABLE TO RECOVERIES FROM EMPLOYERS.

(a) MODIFICATION OF AVERAGE RECOVERY PERCENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LIABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

''(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 4042 was issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 4042) with respect to the plan termination for which the recovery ratio is being determined.''

(b) VALUATION OF SECTION 4062(c) LIABILITY FOR DETERMINING AMOUNTS PAYABLE BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.—

(1) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(c)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 13) is amended to read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (C), the term 'recovery ratio' means the ratio which—

''(i) the sum of the values of all recoveries under section 4062, 4063, or 4064, determined by the corporation in connection with plan terminations described under subparagraph (B), bears to

''(ii) the sum of all unfunded benefit liabilities under such plans as of the termination date in connection with any such prior termination.''.

(2) ALLOCATION OF ASSETS.—Section 4044 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended by adding at the end the following new subsection:

''(e) VALUATION OF SECTION 4062(c) LIABILITY FOR DETERMINING AMOUNTS PAYABLE BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.—

''(1) IN GENERAL.—In the case of a terminated plan, the value of the recovery of liability under section 4062(c) allocable as a plan asset under this section for purposes of determining the amount of benefits payable by the corporation shall be determined by multiplying—

''(A) the amount of liability under section 4062(c) as of the termination date of the plan, by

''(B) the applicable section 4062(c) recovery ratio.

''(2) SECTION 4062(c) RECOVERY RATIO.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the term 'section 4062(c) recovery ratio' means the ratio which—

''(i) the sum of the values of all recoveries under section 4062(c) determined by the corporation in connection with plan terminations described under subparagraph (B), bears to

''(ii) the sum of all the amounts of liability under section 4062(c) with respect to such plans as of the termination date in connection with any such prior termination.

''(B) PRIOR TERMINATIONS.—A plan termination described in this subparagraph is a termination with respect to which—

''(i) the value of recoveries under section 4062(c) have been determined by the corporation, and

''(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 4042 was issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 4042) with respect to the plan termination for which the recovery ratio is being determined.

''(C) EXCEPTION.—In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, the term 'section 4062(c) recovery ratio' means, with respect to the termination of such plan, the ratio of—

''(i) the value of the recoveries on behalf of the plan under section 4062(c), to

''(ii) the amount of the liability owed under section 4062(c) as of the date of plan termination to the trustee appointed under section 4042 (b) or (c).

''(3) SUBSECTION NOT TO APPLY.—This subsection shall not apply with respect to the determination of—

''(A) whether the amount of outstanding benefit liabilities exceeds $20,000,000, or

''(B) the amount of any liability under section 4062 to the corporation or the trustee appointed under section 4042 (b) or (c).

''(4) DETERMINATIONS.—Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply for any termination for which notices of intent to terminate are provided (or in the case of a termination by the corporation, a notice of determination under section 4042 under the Employee Retirement Income Security Act of 1974 is issued) on or after the date which is 30 days after the date of enactment of this section.

SEC. 411. TREATMENT OF CERTAIN PLANS WHERE CESSATION OR CHANGE IN MEMBERSHIP OF A CONTROLLED GROUP.

(a) IN GENERAL.—Section 4041(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(b)) is amended by adding at the end the following new paragraph:

''(5) SPECIAL RULE FOR CERTAIN PLANS WHERE CESSATION OR CHANGE IN MEMBERSHIP OF A CONTROLLED GROUP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if—

''(i) there is transaction or series of transactions which result in a single-employer plan which is a defined benefit plan being maintained by an employer which is not a member of the same controlled group of which the employer maintaining the plan before such transaction or series of transactions was a member,

''(ii) the corporation treats the transaction or series of transactions as resulting in a standard termination to which this subsection applies, and

''(iii) the plan is fully funded,

then the interest rate used in determining whether the plan is sufficient for benefit liabilities for purposes of this subsection shall be the interest rate used in determining whether the plan is fully funded.

''(B) LIMITATIONS.—Subparagraph (A) shall not apply to any transaction or series of transactions unless—

''(i) any employer maintaining the plan immediately before or after such transaction or series of transactions—

''(I) has an outstanding senior unsecured debt instrument which is rated investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

''(II) if no such debt instrument of such employer has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer investment grade, and

''(ii) the employer maintaining the plan after the transaction or series of transactions employs at least 30 percent of the employees located in the United States who were employed by such employer immediately before the transaction or series of transactions.

''(C) FULLY FUNDED.—For purposes of subparagraph (A), a plan shall be treated as fully funded with respect to any transaction or series of transactions if—

''(i) in the case of a transaction or series of transactions which occur in a plan year beginning before January 1, 2007, the funded current liability percentage determined under section 302(d) for the plan year is at least 100 percent, and

''(ii) in the case of a transaction or series of transactions which occur in a plan year beginning on or after such date, the funding target attainment percentage determined under section 303 is, as of the valuation date for such plan year, at least 100 percent.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction or series of transactions occurring on and after the date of the enactment of this Act.

SEC. 412. EFFECT OF TITLE.

The decreases in Federal outlays resulting from the enactment of this title, and the amendments made by this title, shall be treated as in lieu of the decreases in Federal outlays which—

(1) resulted from amendments made to title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.); and

(2) were contained in an Act enacted pursuant to the concurrent resolution on the budget for fiscal year 2006.

TITLE V—DISCLOSURE

SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.

(a) IN GENERAL.—Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) is amended to read as follows:

''(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

''(1) IN GENERAL.—The administrator of a defined benefit plan shall for each plan year provide a plan funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.

''(2) INFORMATION CONTAINED IN NOTICES.—

''(A) IDENTIFYING INFORMATION.—Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan's principal administrative officer, each plan sponsor's employer identification number, and the plan number of the plan.

''(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

''(i)(I) in the case of a single-employer plan, a statement as to whether the plan's funding target attainment percentage (as defined in section 303(d)(2)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), or

''(II) in the case of a multiemployer plan, a statement as to whether the plan's funded percentage (as defined in section 305(i)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages),

''(ii)(I) in the case of a single-employer plan, a statement of the value of the plan's assets and liabilities for the plan year to which the notice relates as of the last day of the plan year to which the notice relates determined using the asset valuation under subclause (I) of section 4006(a)(3)(E)(iii) and the interest rate under subclause (II) of such section, and

''(II) in the case of a multiemployer plan, a statement of the value of the plan's assets and liabilities for the plan year to which the notice relates as the last day of such plan year,

''(iii) a statement of the number of participants who are—

''(I) retired or separated from service and are receiving benefits;

''(II) retired or separated participants entitled to future benefits, and

''(II) active participants under the plan,

''(iv) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates,

''(v) in the case of a multiemployer plan, whether the plan was in critical or endangered status under section 305 for such plan year and, if so—

''(I) a list of the actions taken by the plan to improve its funding status, and

''(II) a statement describing how a person may obtain a copy of the plan's improvement or rehabilitation plan, as appropriate, adopted under section 305 and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement,

''(vi) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates,

''(vii) in the case of any plan amendments, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year (as defined in regulations by the Secretary), an explanation of the amendment, schedule increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities,

''(viii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV, or

''(II) in the case of a multiemployer plan, a summary of the rules governing reorganization or insolvency, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan), and

''(ix) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

''(C) OTHER INFORMATION.—Each notice under paragraph (1) shall include—

''(i) in the case of a multiemployer plan, a statement that the plan administrator shall provide, upon written request, to any labor organization representing plan participants and beneficiaries and any employer that has an obligation to contribute to the plan, a copy of the annual report filed with the Secretary under section 104(a), and

''(ii) any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

''(3) TIME FOR PROVIDING NOTICE.—

''(A) IN GENERAL.—Any notice under paragraph (1) shall be provided not later than 90 days after the end of the plan year to which the notice relates.

''(B) EXCEPTION FOR SMALL PLANS.—In the case of a small plan (as such term is used under section 303(g)(2)(B)) any notice under paragraph (1) shall be provided upon filing of the annual report under section 104(a).

''(4) FORM AND MANNER.—Any notice under paragraph (1)—

''(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

''(B) shall be written in a manner so as to be understood by the average plan participant, and

''(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.''.

(b) MODEL NOTICE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974. The Secretary of Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN INFORMATION.

(a) FINANCIAL INFORMATION WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

''(k) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

''(1) IN GENERAL.—Each administrator of a multiemployer plan shall, upon written request, furnish to any plan participant or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan—

''(A) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days, and

''(B)(i) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days, or

''(ii) at the discretion of the person submitting the written request, a copy of a quarterly summary of the financial reports described clause (i).

''(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

''(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary,

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided, and

''(C) shall not—

''(i) include any individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or

''(ii) reveal any proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

''(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking ''section 101(j)'' and inserting ''subsection (j) or (k) of section 101''.

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(k)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1)) not later than 270 days after the date of the enactment of this Act.

(b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (a)) is amended—

(A) by redesignating subsection (l) as subsection (m); and

(B) by inserting after subsection (k) the following new subsection:

''(l) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

''(1) IN GENERAL.—The plan sponsor or administrator of a multiemployer plan shall, upon written request, furnish to any employer who has an obligation to contribute to the plan a notice of—

''(A) the estimated amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

''(B) an explanation of how such estimated liability amount was determined, including the actuarial assumptions and methods used to determine the value of the plan liabilities and assets, the data regarding employer contributions, unfunded vested benefits, annual changes in the plan's unfunded vested benefits, and the application of any relevant limitations on the estimated withdrawal liability.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

''(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

''(A) shall be provided to the requesting employer within—

''(i) 180 days after the request in a form and manner prescribed in regulations of the Secretary, or

''(ii) subject to regulations of the Secretary, such longer time as may be necessary in the case of a plan that determines withdrawal liability based on any method described under paragraph (4) or (5) of section 4211(c); and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking ''section 101(j) or (k)'' and inserting ''subsection (j), (k), or (l) of section 101''.

(c) NOTICE OF AMENDMENT REDUCING FUTURE ACCRUALS.—Section 204(h)(1) of such Act (29 U.S.C. 1054(h)(1)) is amended by inserting at the end before the period ''and to each employer who has an obligation to contribute to the plan.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 103 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(A) in subsection (a)(1)(B), by striking ''subsections (d) and (e)'' and inserting ''subsections (d), (e), and (f)''; and

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

''(f) ADDITIONAL INFORMATION WITH RESPECT TO DEFINED BENEFIT PLANS.—

''(1) GENERAL INFORMATION.—With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

''(A) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under 2 or more pension plans as of immediately before such plan year, the funded percentage of each of such 2 or more pension plans as of the last day of such plan year and the funded percentage of the plan with respect to which the annual report is filed as of the last day of such plan year.

''(B) For purposes of this paragraph, the term 'funded percentage'—

''(i) in the case of a single-employer plan, means the funding target attainment percentage, as defined in section 303(d)(2), and

''(ii) in the case of a multiemployer plan, has the meaning given such term in section 305(i)(2).

''(2) ADDITIONAL INFORMATION FOR MULTIEMPLOYER PLANS.—With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include, in addition to the information required under paragraph (1), the following, as of the end of the plan year to which the notice relates:

''(A) The number of employers obligated to contribute to the plan.

''(B) A list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year.

''(C) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year and for each of the 2 preceding plan years. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

''(D) The ratio of—

''(i) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the plan year, to

''(ii) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during each of the 2 preceding plan years.

''(E) Whether the plan received an amortization extension under section 304(d) or section 431(d) of the Internal Revenue Code of 1986 for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the extension, and the period of such extension.

''(F) Whether the plan used the shortfall funding method (as such term is used in section 305) for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the use of such method, and the period of use of such method.

''(G) Whether the plan was in critical or endangered status under section 305 for such plan year, and if so, a summary of any funding improvement or rehabilitation plan (or modification thereto) adopted during the plan year, and the funding ratio of the plan.

''(H) The number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers.

''(I) In the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation.''.

(2) GUIDANCE BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor shall publish guidance to assist multiemployer defined benefit plans to—

(i) identify and enumerate plan participants for whom there is no employer with an obligation to make an employer contribution under the plan; and

(ii) report such information under section 103(f)(2)(D) of the Employee Retirement Income Security Act of 1974 (as added by this section).

(B) WAIVER OF REQUIREMENT.—The Secretary of Labor shall waive the requirement under section 103(f)(2)(D) of such Act (as added by this section) for the construction and entertainment industries.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

''(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.''.

(c) FORM AND MANNER OF REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended by—

(1) striking ''(3) Within'' and inserting—

''(A) IN GENERAL.—Within''; and

(2) adding at the end the following:

''(B) FORM OF REPORT.—The material provided pursuant to subparagraph (A) to summarize the latest annual report shall be written in a manner calculated to be understood by the average plan participant.

(d) FURNISHING SUMMARY PLAN INFORMATION TO EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 104 of such Act (29 U.S.C. 1024) is amended—

(A) in the header, by striking ''PARTICIPANTS'' and inserting ''PARTICIPANTS AND CERTAIN EMPLOYERS'';

(B) redesignating subsection (d) as subsection (e); and

(C) inserting after subsection (c) the following:

''(d) FURNISHING SUMMARY PLAN INFORMATION TO EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF MULTIEMPLOYER PLANS.—

''(1) IN GENERAL.—With respect to a multiemployer plan subject to this section, within 30 days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan, the administrators shall furnish to each employee organization, employer with an obligation to contribute to the plan, and the Pension Benefit Guaranty Corporation, a report that contains—

''(A) a description of the contribution schedules and benefit formulas under the plan, and any modification to such schedules and formulas, during such plan year;

''(B) the number of employers obligated to contribute to the plan;

''(C) a list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year;

''(D) the number of participants under the plan on whose behalf no employer contributions (which, for purposes of this paragraph, means, in connection with a participant, a contribution made by an employer as an employer of such participant) have been made to the plan for such plan year and for each of the 2 preceding plan years;

''(E) whether the plan was in critical or endangered status under section 305 for such plan year and, if so, include—

''(i) a list of the actions taken by the plan to improve its funding status; and

''(ii) a statement describing how a person may obtain a copy of the plan's improvement or rehabilitation plan, as appropriate, adopted under section 305 and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement;

''(H) the number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers, as reported on the annual report for the plan year to which the report under this subsection relates;

''(I) in the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation;

''(J) a description as to whether the plan—

''(i) sought or received an amortization extension under section 304(d) or section 431(d) of the Internal Revenue Code of 1986 for such plan year;

''(ii) used the shortfall funding method (as such term is used in section 305) for such plan year; or

''(iii) was in critical or endangered status under section 305 for such plan year; and

''(K) notification of the right under this section of the recipient to a copy of the annual report filed with the Secretary under subsection (a), summary annual report, summary plan description, summary of any material modification of the plan, upon written request, but that—

''(i) in no case shall a recipient be entitled to receive more than one copy of any such report described during any one 12-month period; and

''(ii) the administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to this subparagraph.

''(2) EFFECT OF SECTION.—Nothing in this section waives any other provision under this title requiring plan administrators to provide, upon request, information to employers that have an obligation to contribution under the plan.''.

(e) MODEL FORM.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model form for providing the statements, schedules, and other material required to be provided under section 104(b)(3) of the Employee Retirement Income Security Act of 1974, as amended by this section. The Secretary of

Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.

(f) FIVE-YEAR REPORT WITH RESPECT TO MULTIEMPLOYER PLANS.—Section 4022A(f) of such Act (29 U.S.C. 1322a(f)) is amended by adding at the end the following:

''(6) Not later than 5 years after the date of the enactment of the Pension Security and Transparency Act of 2005, and at least every fifth year thereafter, the corporation shall submit to Congress a report that contains a description of the fiscal conditions of the multiemployer pension plan system as of the date of such report based on the information submitted to the corporation under section 104(d).''.

(g) CONFORMING AMENDMENT.—Title IV of such Act (29 U.S.C. 1301 et seq.) is amended by striking section 4011.

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SPECIAL RULE.—Notwithstanding the provisions of paragraph (1), the requirement under section 103(f)(2)(D) of the Employee Retirement Income Security Act (as added by this section) shall apply to plan years beginning after December 31, 2007.

SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.

(a) FILING AFTER 285 DAYS AFTER PLAN YEAR ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of such Act (29 U.S.C. 1024(a)(1)) is amended by inserting after the first sentence the following new sentence: ''In the case of a pension plan, the Secretary may extend the deadline for filing the annual report for any plan year past 285 days after the close of the plan year only on a case by case basis and only in cases of hardship, in accordance with regulations which shall be prescribed by the Secretary.''.

(b) INTERNET DISPLAY OF INFORMATION.—Section 104(b) of such Act (29 U.S.C. 1024(b)) is amended by adding at the end the following:

''(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on an Internet website maintained by the Secretary and other appropriate media. Such information shall also be displayed on any Internet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor), in accordance with regulations which shall be prescribed by the Secretary.''.

(c) SUMMARY ANNUAL REPORT FILED WITHIN 30 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)), as amended by section 503, is amended by—

(1) striking ''(3)(A) Within 210 days after the close of the fiscal year,'' and inserting ''(3)(A) Within 30 days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan'';

(2) striking ''the latest'' and inserting ''such''; and

(3) adding at the end the following

''(C) DATE OF INTERNET DISPLAY.—Display of the summary annual report on the Internet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) by the date required under subparagraph (A) shall be treated as furnishing such report to each participant and beneficiary receiving benefits under the plan by such date, except that such report shall be furnished to each such participant and beneficiary as soon as practicable thereafter, and in no event later the 30 days after such date.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.

(a) CHANGE IN CRITERIA FOR PERSONS REQUIRED TO PROVIDE INFORMATION TO PBGC.—Section 4010(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310(b)) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) the aggregate'' and inserting ''(1)(A) the aggregate'';

(B) by striking the semicolon and inserting ''; and'';

(C) by inserting after subparagraph (A) the following:

''(B)(i) the aggregate funding targets attainment percentage of the plan (as defined in subsection (d)) is less than 90 percent; or

''(ii) any debt instrument of the plan sponsor or the plan sponsor has received a rating described in subclause (I) or (II) of section 303(i)(5)(A)(i);''; and

(2) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, and by inserting before paragraph (4) (as so redesignated) the following new paragraphs:

''(2) the aggregate funding targets attainment percentage of the plan (as defined in subsection (d)) is less than 60 percent;

''(3)(A) the aggregate funding targets attainment percentage of the plan (as defined in subsection (d)) is less than 75 percent, and

''(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining;''.

(b) ADDITIONAL INFORMATION REQUIRED.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

''(d) ADDITIONAL INFORMATION REQUIRED.—

''(1) IN GENERAL.—The information submitted to the corporation under subsection (a) shall include—

''(A) the amount of benefit liabilities under the plan determined using the assumptions used by the corporation in determining liabilities;

''(B) the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and

''(C) the funding target attainment percentage of the plan.

''(2) DEFINITIONS.—For purposes of this subsection:

''(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(g)(3).

''(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

''(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

''(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' means, with respect to a contributing sponsor for a plan year, the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which—

''(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

''(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(i)(4).

''(e) NOTICE TO CONGRESS.—The Corporation shall, on an annual basis, submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives, a summary report of the information submitted to the Corporation under this section.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO PLAN PARTICIPANTS.

(a) DISTRESS TERMINATIONS.—

(1) IN GENERAL.—Section 4041(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)) is amended by adding at the end the following:

''(D) DISCLOSURE OF TERMINATION INFORMATION.—

''(i) IN GENERAL.—A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any information provided to the corporation under paragraph (2) not later than 15 days after—

''(I) receipt of a request from the affected party for the information; or

''(II) the provision of new information to the corporation relating to the previous request.

''(ii) CONFIDENTIALITY.—

''(I) IN GENERAL.—The plan administrator shall not provide information under clause (i) in a form that includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

''(II) LIMITATION.—A court may limit disclosure under this subparagraph of confidential information described in section 552(b) of title 5, United States Code, to any authorized representative of the participants or beneficiaries that agrees to ensure the confidentiality of such information.

''(iii) FORM AND MANNER OF INFORMATION; CHARGES.—

''(I) FORM AND MANNER.—The corporation may prescribe the form and manner of the provision of information under this subparagraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

''(II) REASONABLE CHARGES.—A plan sponsor may charge a reasonable fee for any information provided under this subparagraph in other than electronic form.

''(iv) AUTHORIZED REPRESENTATIVE.—For purposes of this subparagraph, the term 'authorized representative' means any employee organization representing participants in the pension plan.''.

(2) CONFORMING AMENDMENT.—Section 4041(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(1)) is amended in subparagraph (C) by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (D)''.

(b) INVOLUNTARY TERMINATIONS.—

(1) IN GENERAL.—Section 4042(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342(c)) is amended by—

(A) striking ''(c) If the'' and inserting ''(c)(1) If the'';

(B) redesignating paragraph (3) as paragraph (2); and

(C) adding at the end the following:

''(3) DISCLOSURE OF TERMINATION INFORMATION.—

''(A) IN GENERAL.—

''(i) INFORMATION FROM PLAN SPONSOR OR ADMINISTRATOR.—A plan sponsor or plan administrator of a single-employer plan that has received a notice from the corporation of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in conjunction with the plan termination.

''(ii) INFORMATION FROM CORPORATION.—The corporation shall provide a copy of the administrative record, including the trusteeship decision record of a termination of a plan described under clause (i).

''(B) TIMING OF DISCLOSURE.—The plan sponsor, plan administrator, or the corporation, as applicable, shall provide the information described in subparagraph (A) not later than 15 days after—

''(i) receipt of a request from an affected party for such information; or

''(ii) in the case of information described under subparagraph (A)(i), the provision of any new information to the corporation relating to a previous request by an affected party.

''(C) CONFIDENTIALITY.—

''(i) IN GENERAL.—The plan administrator and plan sponsor shall not provide information under subparagraph (A)(i) in a form which includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

''(ii) LIMITATION.—A court may limit disclosure under this paragraph of confidential information described in section 552(b) of title 5, United States Code, to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv)) of the participants or beneficiaries that agree to ensure the confidentiality of such information.

''(D) FORM AND MANNER OF INFORMATION; CHARGES.—

''(i) FORM AND MANNER.—The corporation may prescribe the form and manner of the provision of information under this paragraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

''(ii) REASONABLE CHARGES.—A plan sponsor may charge a reasonable fee for any information provided under this paragraph in other than electronic form.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any plan termination under title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) with respect to which the notice of intent to terminate (or in the case of a termination by the Pension Benefit Guaranty Corporation, a notice of determination under section 4042 of such Act (29 U.S.C. 1342)) occurs after the date of enactment of this Act.

SEC. 507. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under subparagraph (B) of section 203(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation in connection with any suspension of benefits described in such subparagraph—

(1) in the case of an employee who returns to service described in section 203(a)(3)(B) (i) or (ii) of such Act after commencement of payment of benefits under the plan, shall be made during the first calendar month or the first 4- or 5-week payroll period ending in a calendar month in which the plan withholds payments, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2005.

SEC. 508. STUDY AND REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the effectiveness of the enforcement of provisions in the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and in other Federal laws designed to protect pension plans and the assets and participants of such plan from fraud and mismanagement, including excessive investment management fees, violations of fiduciary duties under Title I of such Act, and the quality of plan assets.

(b) CONTENT OF STUDY.—The study described in subsection (a) shall include:

(1) An identification of which Federal departments and agencies have responsibility for enforcement of these provisions, including the recovery of lost plan assets due to fraud and mismanagement.

(2) Identification of all administrative enforcement powers, procedures, and strategies used by the Securities and Exchange Commission that have the potential to improve the Department of Labor's enforcement of the fiduciary provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(3) Identification of any statutory or other barriers that restrict the Department of Labor's authority to use such powers, procedures, and strategies identified in paragraph (2).

(4) An evaluation of whether giving additional investigative or enforcement authority to the Pension Benefit Guaranty Corporation or the Securities and Exchange Commission would significantly improve enforcement of those provisions.

(5) An evaluation of the current authority of the Pension Benefit Guaranty Corporation to bring actions to recover any funds lost by pension plans due to violations of any fiduciary standards under Title I of such Act or other Federal statutes.

(6) The impact that expanding any such authority by the Pension Benefit Guaranty Corporation to bring such actions would have on the Corporation's solvency.

(c) REPORT.—Not later than 6 months after the enactment of this Act, the Comptroller General shall submit a report to Congress on the study conducted under subsection (a) that includes such recommendations for legislation or administrative action as the Comptroller General determines are appropriate.

TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS

SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINATION, CONVERSION, AND PRESENT VALUE ASSUMPTION RULES.

(a) APPLICATION OF AGE DISCRIMINATION PROHIBITIONS.—

(1) AMENDMENT OF ERISA.—Section 204(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)) is amended by adding at the end the following:

''(5) SPECIAL RULES FOR CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PLANS.—

''(A) IN GENERAL.—A qualified cash balance plan shall not be treated as violating the requirements of paragraph (1)(H) merely because it may reasonably be expected that the period over which interest credits will be made to a participant's accumulation account (or its equivalent) is longer for a younger participant. This paragraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.

''(B) QUALIFIED CASH BALANCE PLAN.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified cash balance plan' means a cash balance plan which meets the vesting requirement under clause (ii) and the interest credit requirement under clause (iii).

''(ii) VESTING REQUIREMENTS.—A plan meets the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) INTEREST CREDITS.—A plan meets the requirements of this clause if the terms of the plan provide that any interest credit (or equivalent amount) for any plan year shall be at a rate which—

''(I) is not less than the applicable Federal mid-term interest rate (as determined under section 1274(d)(1) of the Internal Revenue Code of 1986), and

''(II) is not greater than the greater of the rate determined under subclause (I) or a rate equal to the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds.

''(iv) DETERMINATION OF RATES.—For purposes of clause (iii)(II), the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds shall be determined by the Secretary of the Treasury on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury. The Secretary of the Treasury shall make publicly available the indices and methodology used to determine the rate.

''(v) VARIABLE RATE OF INTEREST.—If the interest credit rate under the plan is a variable rate, the plan shall provide that, upon the termination of the plan, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date.

''(C) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' means a defined benefit plan under which—

''(i) the accrued benefit is determined by reference to the balance of a hypothetical accumulation account, and

''(ii) pay credits and interest credits are credited to such account.

''(D) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—

''(i) CASH BALANCE PLAN.—The Secretary of the Treasury shall issue regulations which include in the definition of cash balance plan any defined benefit plan (or any portion of such a plan) which has an effect similar to a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding sentence, such plan shall be treated as a cash balance plan.

''(ii) QUALIFIED CASH BALANCE PLAN.—The Secretary of the Treasury may in the regulations issued under clause (i) provide for the treatment of a cash balance plan as a qualified cash balance plan in cases where the cash balance plan has an effect similar to the qualified cash balance plan.''.

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(i)(2) of the Age Discrimination of Employment Act of 1967 (29 U.S.C. 623(i)(2)) is amended—

(A) by inserting ''(A)'' after ''(2)'', and

(B) by adding at the end the following new subparagraph:

''(B) A defined benefit plan which is treated as a qualified cash balance plan for purposes of section 204(b)(5) of the Employee Retirement Income Security Act of 1974 shall not be treated as violating the requirements of paragraph (1)(A) merely because it may reasonably be expected that the period over which interest credits will be made under the plan to a participant's accumulation account (or its equivalent) is longer for a younger participant. This subparagraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.''.

(3) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(b) of the Internal Revenue Code of 1986 (relating to accrued benefit requirements) is amended by adding at the end the following:

''(5) SPECIAL RULES FOR CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PLANS.—

''(A) IN GENERAL.—A qualified cash balance plan shall not be treated as violating the requirements of paragraph (1)(H) merely because it may reasonably be expected that the period over which interest credits will be made to a participant's accumulation account (or its equivalent) is longer for a younger participant. This paragraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.

''(B) QUALIFIED CASH BALANCE PLAN.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified cash balance plan' means a cash balance plan which meets the vesting requirement under clause (ii) and the interest credit requirement under clause (iii).

''(ii) VESTING REQUIREMENTS.—A plan meets the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) INTEREST CREDITS.—A plan meets the requirements of this clause if the terms of the plan provide that any interest credit (or equivalent amount) for any plan year shall be at a rate which—

''(I) is not less than the applicable Federal mid-term interest rate (as determined under section 1274(d)(1)), and

''(II) is not greater than the greater of the rate determined under subclause (I) or a rate equal to the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds.

''(iv) DETERMINATION OF RATES.—For purposes of clause (iii)(II), the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds shall be determined by the Secretary on the basis of 2 or more indices that are selected periodically by the Secretary. The Secretary shall make publicly available the indices and methodology used to determine the rate.

''(v) VARIABLE RATE OF INTEREST.—If the interest credit rate under the plan is a variable rate, the plan shall provide that, upon the termination of the plan, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date.

''(C) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' means a defined benefit plan under which—

''(i) the accrued benefit is determined by reference to the balance of a hypothetical accumulation account, and

''(ii) pay credits and interest credits are credited to such account.

''(D) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—

''(i) CASH BALANCE PLAN.—The Secretary shall issue regulations which include in the definition of cash balance plan any defined benefit plan (or any portion of such a plan) which has an effect similar to a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding sentence, such plan shall be treated as a cash balance plan.

''(ii) QUALIFIED CASH BALANCE PLAN.—The Secretary may in the regulations issued under clause (i) provide for the treatment of a cash balance plan as a qualified cash balance plan in cases where the cash balance plan has an effect similar to the qualified cash balance plan.''.

(b) RULES APPLICABLE TO ACCRUED BENEFITS UNDER CONVERTED PLANS.—

(1) AMENDMENT OF ERISA.—Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CONVERSIONS TO CASH BALANCE OR OTHER HYBRID PLANS.—

''(A) IN GENERAL.—For purposes of this subsection, an applicable plan amendment shall be treated as reducing the accrued benefit of a participant if, under the terms of the plan as in effect after the amendment, the accrued benefit of any participant who was a participant as of the effective date of the amendment may at any time be less than the accrued benefit determined under the method under subparagraph (B), (C), or (D) which is specified in the plan and applies uniformly to all participants. An applicable plan amendment shall in no event be treated as meeting the requirements of any such subparagraph if the conversion described in subparagraph (G)(i) is into a cash balance plan other than a qualified cash balance plan (as defined in subsection (b)(5)(B)).

''(B) NO WEARAWAY.—

''(i) IN GENERAL.—The accrued benefit determined under this subparagraph is the sum of—

''(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

''(II) except as provided in clause (ii), the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

''(ii) REQUIRED AMOUNTS FOR CERTAIN PERIODS.—Notwithstanding clause (i)(II), the plan shall provide that either—

''(I) the accrued benefit of all participants for each of the first 5 plan years to which the amendment applies shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment, or

''(II) the accrued benefit for periods after the effective date of the amendment of all participants who, as of the effective date of the amendment, had attained the age of 40 and had a combined age and years of service under the plan of not less than 55 shall be determined under either of the methods described in clause (iii) which is selected by the plan and which is specified in the amendment.

''(iii) APPLICABLE METHOD.—For purposes of clause (ii)(II), the plan shall select 1 of the following methods:

''(I) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

''(II) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

''(C) GREATER OF OLD OR NEW OR ELECTION OF EITHER.—The accrued benefit determined under this subparagraph is the accrued benefit determined under 1 of the following methods which is selected by the plan and which is specified in the amendment:

''(i) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

''(ii) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

''(D) METHOD PRESCRIBED BY SECRETARY.—The accrued benefit determined under this subparagraph shall be determined under regulations prescribed by the Secretary which are consistent with the purposes of this paragraph and which may require a plan to provide a credit of additional amounts or increases in initial account balances in amounts substantially equivalent to the benefits that would be required to be provided to meet the requirements of subparagraphs (B) or (C).

''(E) INCLUSION OF PRIOR ACCRUED BENEFIT INTO INITIAL ACCOUNT BALANCE.—

''(i) IN GENERAL.—If, for purposes of subparagraphs (B), (C), or (D), an applicable plan amendment provides that an amount will be initially credited to a participant's accumulation account (or its equivalent) on the effective date of the amendment with respect to the participant's accrued benefit for periods before such date, the requirements of such subparagraph shall be treated as met with respect to such accrued benefit if the amount initially credited is not less than the present value of the participant's accrued benefit determined by using the applicable mortality table and the lower of the applicable interest rate under section 205(g)(3)(A), or the interest rate used to credit interest under the plan, as of such date.

''(ii) ADJUSTMENTS FOR CERTAIN SUBSIDIZED BENEFITS.—For purposes of subparagraph (B), if any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (6)(B)(i)) is not included in the initial account balance under clause (i), the plan shall credit the accumulation account with the amount of such benefit or subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

''(F) REQUIREMENTS WHERE PARTICIPANT OFFERED CHOICE.—If a plan provides a participant with an election described in subparagraph (B)(iii)(II) or (C)(ii), the following rules shall apply:

''(i) NOTICE.—The plan shall not be treated as meeting the requirements of either such subparagraph unless the plan provides the participant a notice of the right to make such election which includes information (meeting such requirements as may be prescribed by the Secretary of the Treasury)—

''(I) by which the participant may project benefits under the formulas from which the participant may choose and may model the impact of any such choice, and

''(II) with respect to circumstances under which a participant may not receive the projected accrued benefits by reason of a plan termination or otherwise.

''(ii) SIGNIFICANT REDUCTION OF RATE OF ACCRUAL.—The plan shall provide that if, during any of the first 5 plan years during which such an election is in effect, the plan adopts an amendment which results in a significant reduction in the rate of future benefit accrual (within the meaning of section 204(h)), the accrued benefit of the participant shall be determined as if the participant had made the election which resulted in the greatest accrued benefit.

''(iii) BENEFITS MUST NOT BE CONTINGENT ON ELECTION.—The plan shall not be treated as meeting the requirements of either such subparagraph if any other benefit is conditioned (directly or indirectly) on such election.

''(G) APPLICABLE PLAN AMENDMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable plan amendment' means an amendment to a defined benefit plan which has the effect of converting the plan to a cash balance plan.

''(ii) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in clause (i), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(iii) MULTIPLE AMENDMENTS.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this paragraph through the use of 2 or more plan amendments rather than a single amendment.

''(iv) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' has the meaning given such term by subsection (b)(5)(C).

''(v) COORDINATION WITH ACCRUAL RULES.—If a plan amendment is treated as meeting the requirements of this paragraph with respect to any participant because such participant is eligible to continue to accrue benefits in the same manner as under the terms of the plan in effect before the amendment, the Secretary of the Treasury shall prescribe regulations under which the plan shall not be treated as failing to meet the requirements of subparagraph (A), (B), or (C) of section 204(b)(1) if the requirements of this paragraph are met.

''(H) APPLICATION OF CERTAIN RULES TO EARLY-RETIREMENT BENEFITS.—Rules similar to the rules of clauses (i), (ii), and (iii) of subparagraph (B) and subparagraph (C) shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 204(g)(2)(A)).''.

(2) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(d) of the Internal Revenue Code of 1986 (relating to special rules) is amended by adding at the end the following new paragraph:

''(7) TREATMENT OF CONVERSIONS TO CASH BALANCE OR OTHER HYBRID PLANS.—

''(A) IN GENERAL.—For purposes of paragraph (6), an applicable plan amendment shall be treated as reducing the accrued benefit of a participant if, under the terms of the plan as in effect after the amendment, the accrued benefit of any participant who was a participant as of the effective date of the amendment may at any time be less than the accrued benefit determined under the method under subparagraph (B), (C), or (D) which is specified in the plan and applies uniformly to all participants. An applicable plan amendment shall in no event be treated as meeting the requirements of any such subparagraph if the conversion described in subparagraph (G)(i) is into a cash balance plan other than a qualified cash balance plan (as defined in subsection (b)(5)(B)).

''(B) NO WEARAWAY.—

''(i) IN GENERAL.—The accrued benefit determined under this subparagraph is the sum of—

''(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

''(II) except as provided in clause (ii), the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

A similar rule shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)).

''(ii) REQUIRED AMOUNTS FOR CERTAIN PERIODS.—Notwithstanding clause (i)(II), the plan shall provide that either—

''(I) the accrued benefit of all participants for each of the first 5 plan years to which the amendment applies shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment, or

''(II) the accrued benefit for periods after the effective date of the amendment of all participants who, as of the effective date of the amendment, had attained the age of 40 and had a combined age and years of service under the plan of not less than 55 shall be determined under either of the methods described in clause (iii) which is selected by the plan and which is specified in the amendment.

''(iii) APPLICABLE METHOD.—For purposes of clause (ii)(II), the plan shall select 1 of the following methods:

''(I) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

''(II) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

''(C) GREATER OF OLD OR NEW OR ELECTION OF EITHER.—The accrued benefit determined under this subparagraph is the accrued benefit determined under 1 of the following methods which is selected by the plan and which is specified in the amendment:

''(i) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

''(ii) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

''(D) METHOD PRESCRIBED BY SECRETARY.—The accrued benefit determined under this subparagraph shall be determined under regulations prescribed by the Secretary which are consistent with the purposes of this paragraph and which may require a plan to provide a credit of additional amounts or increases in initial account balances in amounts substantially equivalent to the benefits that would be required to be provided to meet the requirements of subparagraphs (B) or (C).

''(E) INCLUSION OF PRIOR ACCRUED BENEFIT INTO INITIAL ACCOUNT BALANCE.—

''(i) IN GENERAL.—If, for purposes of subparagraphs (B), (C), or (D), an applicable plan amendment provides that an amount will be initially credited to a participant's accumulation account (or its equivalent) on the effective date of the amendment with respect to the participant's accrued benefit for periods before such date, the requirements of such subparagraph shall be treated as met with respect to such accrued benefit if the amount initially credited is not less than the present value of the participant's accrued benefit determined by using the applicable mortality table and the lower of the applicable interest rate under section 417(e)(3)(A), or the interest rate used to credit interest under the plan, as of such date.

''(ii) ADJUSTMENTS FOR CERTAIN SUBSIDIZED BENEFITS.—For purposes of subparagraph (B), if any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (6)(B)(i)) is not included in the initial account balance under clause (i), the plan shall credit the accumulation account with the amount of such benefit or subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

''(F) REQUIREMENTS WHERE PARTICIPANT OFFERED CHOICE.—If a plan provides a participant with an election described in subparagraph (B)(iii)(II) or (C)(ii), the following rules shall apply:

''(i) NOTICE.—The plan shall not be treated as meeting the requirements of either such subparagraph unless the plan provides the participant a notice of the right to make such election which includes information (meeting such requirements as may be prescribed by the Secretary)—

''(I) by which the participant may project benefits under the formulas from which the participant may choose and may model the impact of any such choice, and

''(II) with respect to circumstances under which a participant may not receive the projected accrued benefits by reason of a plan termination or otherwise.

''(ii) SIGNIFICANT REDUCTION OF RATE OF ACCRUAL.—The plan shall provide that if, during any of the first 5 plan years during which such an election is in effect, the plan adopts an amendment which results in a significant reduction in the rate of future benefit accrual (within the meaning of section 4980F(e)), the accrued benefit of the participant shall be determined as if the participant had made the election which resulted in the greatest accrued benefit.

''(iii) BENEFITS MUST NOT BE CONTINGENT ON ELECTION.—The plan shall not be treated as meeting the requirements of either such subparagraph if any other benefit is conditioned (directly or indirectly) on such election.

''(G) APPLICABLE PLAN AMENDMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable plan amendment' means an amendment to a defined benefit plan which has the effect of converting the plan to a cash balance plan.

''(ii) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in clause (i), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(iii) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this paragraph through the use of 2 or more plan amendments rather than a single amendment.

''(iv) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' has the meaning given such term by subsection (b)(5)(C).

''(v) COORDINATION WITH ACCRUAL AND NONDISCRIMINATION RULES.—If a plan amendment is treated as meeting the requirements of this paragraph with respect to any participant because such participant is eligible to continue to accrue benefits in the same manner as under the terms of the plan in effect before the amendment, the Secretary shall prescribe regulations under which—

''(I) the plan shall not be treated as failing to meet the requirements of subparagraph (A), (B), or (C) of section 411(b)(1) if the requirements of this paragraph are met, and

''(II) the plan shall, subject to such terms and conditions as may be provided in such regulations, not be treated as failing to meet the requirements of section 401(a)(4) merely because the plan provides any accrual or benefit which is required to be provided under subparagraph (B), (C), or (D) or because only participants as of the effective date of the amendment are so eligible, except that this subclause shall only apply if the plan met the requirements of section 401(a)(4) under the terms of the plan as in effect before the amendment.

''(H) APPLICATION OF CERTAIN RULES TO EARLY-RETIREMENT BENEFITS.—Rules similar to the rules of clauses (i), (ii), and (iii) of subparagraph (B) and subparagraph (C) shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)).''.

(c) ASSUMPTIONS USED IN COMPUTING PRESENT VALUE OF ACCRUED BENEFIT.—

(1) AMENDMENT OF ERISA.—Section 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)), is amended—

(A) by striking ''or (B)'' in subparagraph (A)(i) and inserting '', (B), or (C)'', and

(B) by adding at the end the following new subparagraph:

''(C) PRESENT VALUE OF ACCRUED BENEFIT UNDER CASH BALANCE PLAN.—Except as provided in regulations, in the case of a qualified cash balance plan (as defined in section 204(g)(6)(B)), the present value of the accrued benefit of any participant shall, for purposes of paragraphs (1) and (2), be equal to the balance in the participant's accumulation account (or its equivalent) as of the time the present value determination is being made.''.

(2) AMENDMENT OF INTERNAL REVENUE CODE.—Section 417(e)(3) of such Code, is amended—

(A) by striking ''or (B)'' in subparagraph (A)(i) and inserting '', (B), or (C)'', and

(B) by adding at the end the following new subparagraph:

''(C) PRESENT VALUE OF ACCRUED BENEFIT UNDER CASH BALANCE PLAN.—Except as provided in regulations, in the case of a qualified cash balance plan (as defined in section 411(d)(7)(B)), the present value of the accrued benefit of any participant shall, for purposes of paragraphs (1) and (2), be equal to the balance in the participant's accumulation account (or its equivalent) as of the time the present value determination is being made.''

(d) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of cash balance plans or conversions to cash balance plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974, 4(i)(1) of the Age Discrimination in Employment Act of 1967, and 411(b)(1)(H) of the Internal Revenue Code of 1986, as in effect before such amendments.

(e) EFFECTIVE DATES.—

(1) AGE DISCRIMINATION AND LUMP-SUM DISTRIBUTIONS.—

(A) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to periods after July 31, 2005.

(B) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on July 31, 2005, the requirements of clauses (ii) and (iii) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, and of clauses (ii) and (iii) of 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 shall, for purposes of applying the amendments made by subsections (a) and (c), apply to years beginning after December 31, 2006, unless the plan sponsor elects the application of such requirements for any period after July 31, 2005, and before the first year beginning after December 31, 2006.

(C) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, the requirements described in subparagraph (B) shall, for purposes of applying the amendments made by subsections (a) and (c), not apply to plan years beginning before—

(i) the earlier of—

(I) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(II) January 1, 2007, or

(ii) January 1, 2009.

(2) CONVERSIONS.—The amendments made by subsection (b) shall apply to plan amendments adopted after, and taking effect after, July 31, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect after, such date.

SEC. 602. REGULATIONS RELATING TO MERGERS AND ACQUISITIONS.

The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act, prescribe regulations for the application of the amendments made by, and the provisions of, this title in cases where the conversion of a plan to a cash balance plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.

TITLE VII—DIVERSIFICATION RIGHTS AND OTHER PARTICIPANT PROTECTIONS UNDER DEFINED CONTRIBUTION PLANS

SEC. 701. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE EMPLOYEES WITH FREEDOM TO INVEST THEIR PLAN ASSETS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans), as amended by section 115 of this Act, is amended by inserting after paragraph (34) the following new paragraph:

''(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

''(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

''(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

''(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this subparagraph if each applicable individual who—

''(i) is a participant who has completed at least 3 years of service, or

''(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

''(D) INVESTMENT OPTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities or employer real property, to which an applicable individual may direct the proceeds from the divestment of employer securities or employer real property pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

''(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

''(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

''(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities or employer real property which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

''(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable defined contribution plan' means any defined contribution plan which holds any publicly traded employer securities.

''(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

''(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

''(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

''(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

''(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term 'one-participant retirement plan' means a retirement plan that—

''(I) on the first day of the plan year covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

''(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

''(III) does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses),

''(IV) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term 'partner' includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.

''(F) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

''(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

''(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

''(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

''(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

''(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

''(I) 'controlled group of corporations' has the meaning given such term by section 1563(a), except that '50 percent' shall be substituted for '80 percent' each place it appears,

''(II) 'employer corporation' means a corporation which is an employer maintaining the plan, and

''(III) 'parent corporation' has the meaning given such term by section 424(e).

''(G) OTHER DEFINITIONS.—For purposes of this paragraph—

''(i) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(I) any participant in the plan, and

''(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

''(ii) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A).

''(iii) EMPLOYER SECURITY.—The term 'employer security' has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

''(iv) EMPLOYER REAL PROPERTY.—The term 'employer real property' has the meaning given such term by section 407(d)(2) of the Employee Retirement Income Security Act of 1974.

''(v) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7).

''(vi) PUBLICLY TRADED EMPLOYER SECURITIES.—The term 'publicly traded employer securities' means employer securities which are readily tradable on an established securities market.

''(vii) YEAR OF SERVICE.—The term 'year of service' has the meaning given such term by section 411(a)(5).

''(H) TRANSITION RULE FOR SECURITIES OR REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

''(i) RULES PHASED IN OVER 3 YEARS.—

''(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities or employer real property acquired in a plan year beginning before January 1, 2006, subparagraph (C) shall only apply to the applicable percentage of such securities or real property. This subparagraph shall be applied separately with respect to each class of securities and employer real property.

''(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28)(B) of such Code (relating to additional requirements relating to employee stock ownership plans) is amended by adding at the end the following new clause:

''(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).''

(B) Section 409(h)(7) of such Code is amended by inserting ''or subparagraph (B) or (C) of section 401(a)(35)'' before the period at the end.

(C) Section 4980(c)(3)(A) of such Code is amended by striking ''if—'' and all that follows and inserting ''if the requirements of subparagraphs (B), (C), and (D) are met.''

(b) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

''(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN INDIVIDUAL ACCOUNT PLANS.—

''(1) IN GENERAL.—An applicable individual account plan shall meet the diversification requirements of paragraphs (2), (3), and (4).

''(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this paragraph if the applicable individual may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

''(3) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this paragraph if each applicable individual who—

''(A) is a participant who has completed at least 3 years of service, or

''(B) is a beneficiary of a participant described in subparagraph (A) or of a deceased participant,

may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

''(4) INVESTMENT OPTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the plan offers not less than 3 investment options, other than employer securities or employer real property, to which an applicable individual may direct the proceeds from the divestment of employer securities or employer real property pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

''(B) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

''(i) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

''(ii) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities or employer real property which are not imposed on the investment of other assets of the plan. This subparagraph shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

''(5) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable individual account plan' means any individual account plan (as defined in section 3(34)) which holds any publicly traded employer securities.

''(B) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

''(i) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m) of section 401 of the Internal Revenue Code of 1986, and

''(ii) such plan is a separate plan (for purposes of section 414(l) of such Code) with respect to any other defined benefit plan or individual account plan maintained by the same employer or employers.

''(C) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term shall not include a one-participant retirement plan (as defined in section 101(i)(8)(B)).

''(D) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

''(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

''(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

''(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

''(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

''(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

''(I) 'controlled group of corporations' has the meaning given such term by section 1563(a) of the Internal Revenue Code of 1986, except that '50 percent' shall be substituted for '80 percent' each place it appears,

''(II) 'employer corporation' means a corporation which is an employer maintaining the plan, and

''(III) 'parent corporation' has the meaning given such term by section 424(e) of such Code.

''(6) OTHER DEFINITIONS.—For purposes of this paragraph—

''(A) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the plan, and

''(ii) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

''(B) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986.

''(C) EMPLOYER SECURITY.—The term 'employer security' has the meaning given such term by section 407(d)(1).

''(D) EMPLOYER REAL PROPERTY.—The term 'employer real property' has the meaning given such term by section 407(d)(2).

''(E) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7) of such Code.

''(F) PUBLICLY TRADED EMPLOYER SECURITIES.—The term 'publicly traded employer securities' means employer securities which are readily tradable on an established securities market.

''(G) YEAR OF SERVICE.—The term 'year of service' has the meaning given such term by section 203(b)(2).

''(7) TRANSITION RULE FOR SECURITIES OR REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

''(A) RULES PHASED IN OVER 3 YEARS.—

''(i) IN GENERAL.—In the case of the portion of an account to which paragraph (3) applies and which consists of employer securities or employer real property acquired in a plan year beginning before January 1, 2006, paragraph (3) shall only apply to the applicable percentage of such securities or real property. This subparagraph shall be applied separately with respect to each class of securities and employer real property.

''(ii) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined as follows:

Plan year to which paragraph (3) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.''.

(2) CONFORMING AMENDMENT.—Section 407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is amended by adding at the end the following:

''(D) For diversification requirements for qualifying employer securities and qualifying real property held in certain individual account plans, see section 204(j).''

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''December 31, 2005'' the earlier of—

(A) the later of—

(i) December 31, 2006, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2007.

(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section shall apply to plan years beginning after the earlier of—

(i) December 31, 2006, or

(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

(i) consist of preferred stock, and

(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.

SEC. 702. NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES OR REAL PROPERTY.

(a) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021), as amended by this Act, is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

''(m) NOTICE OF RIGHT TO DIVEST.—Not later than 30 days before the first date on which an applicable individual of an applicable individual account plan is eligible to exercise the right under section 204(j) to direct the proceeds from the divestment of employer securities or employer real property with respect to any type of contribution, the administrator shall provide to such individual a notice—

''(1) setting forth such right under such section, and

''(2) describing the importance of diversifying the investment of retirement account assets.

The notice required by this subsection shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient.''

(b) PENALTIES.—Section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(7)) is amended by striking ''section 101(i)'' and inserting ''subsection (i) or (m) of section 101''.

(c) MODEL NOTICE.—The Secretary of the Treasury shall, within 180 days after the date of the enactment of this subsection, prescribe a model notice for purposes of satisfying the requirements of the amendments made by this section.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) TRANSITION RULE.—If notice under section 101(m) of the Employee Retirement Income Security Act of 1974 (as added by this section) would otherwise be required to be provided before the 90th day after the date of the enactment of this Act, such notice shall not be required to be provided until such 90th day.

SEC. 703. PERIODIC PENSION BENEFIT STATEMENTS.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025(a)) is amended to read as follows:

''(a) REQUIREMENTS TO PROVIDE PENSION BENEFIT STATEMENTS.—

''(1) REQUIREMENTS.—

''(A) INDIVIDUAL ACCOUNT PLAN.—The administrator of an individual account plan (other than a one-participant retirement plan described in section 101(i)(8)(B)) shall furnish a pension benefit statement—

''(i) at least once each calendar quarter to a participant or beneficiary who has the right to direct the investment of assets in his or her account under the plan,

''(ii) at least once each calendar year to a participant or beneficiary who has his or her own account under the plan but does not have the right to direct the investment of assets in that account, and

''(iii) upon written request to a plan beneficiary not described in clause (i) or (ii).

''(B) DEFINED BENEFIT PLAN.—The administrator of a defined benefit plan (other than a one-participant retirement plan described in section 101(i)(8)(B)) shall furnish a pension benefit statement—

''(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit and who is employed by the employer maintaining the plan at the time the statement is to be furnished, and

''(ii) to a participant or beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

''(2) STATEMENTS.—

''(A) IN GENERAL.—A pension benefit statement under paragraph (1)—

''(i) shall indicate, on the basis of the latest available information—

''(I) the total benefits accrued, and

''(II) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

''(ii) shall include an explanation of any permitted disparity under section 401(l) of the Internal Revenue Code of 1986 or any floor-offset arrangement that may be applied in determining any accrued benefits described in clause (i),

''(iii) shall be written in a manner calculated to be understood by the average plan participant, and

''(iv) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

''(B) ADDITIONAL INFORMATION.—In the case of an individual account plan, any pension benefit statement under clause (i) or (ii) of paragraph (1)(A) shall include—

''(i) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities or employer real property, without regard to whether such securities or real property were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and ''(ii) in the case of a pension benefit statement under paragraph (1)(A)(i)—

''(I) an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment, and

''(II) a notice that investments in any individual account may not be adequately diversified if the value of any investment in the account exceeds 20 percent of the fair market value of all investments in the account.

''(C) ALTERNATIVE NOTICE.—The requirements of subparagraph (A)(i)(II) are met if, at least annually and in accordance with requirements of the Secretary, the plan—

''(i) updates the information described in such paragraph which is provided in the pension benefit statement, or

''(ii) provides in a separate statement such information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits.

''(3) DEFINED BENEFIT PLANS.—

''(A) ALTERNATIVE NOTICE.—In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant.

''(B) YEARS IN WHICH NO BENEFITS ACCRUE.—The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).''

(2) CONFORMING AMENDMENTS.—

(A) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(B) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

''(b) LIMITATION ON NUMBER OF STATEMENTS.—In no case shall a participant or beneficiary of a plan be entitled to more than 1 statement described in subparagraph (A)(iii) or (B)(ii) of subsection (a)(1), whichever is applicable, in any 12-month period.''

(C) Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by striking ''or section 101(f)'' and inserting ''section 101(f), or section 105(a)''.

(b) MODEL STATEMENTS.—

(1) IN GENERAL.—The Secretary of Labor shall, within 180 days after the date of the enactment of this section, develop 1 or more model benefit statements that are written in a manner calculated to be understood by the average plan participant and that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974.

(2) INTERIM FINAL RULES.—The Secretary of Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''December 31, 2006'' the earlier of—

(A) the later of—

(i) December 31, 2007, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2008.

SEC. 704. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF BLACKOUT PERIODS.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 101(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)) is amended—

(A) by striking clauses (i) through (iv) of paragraph (8)(B) and inserting:

''(i) on the first day of the plan year—

''(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

''(II) covered only one or more partners (or partners and their spouses) in the plan sponsor, and'', and

(B) in paragraph (8)(B), by redesignating clause (v) as clause (ii).

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the provisions of section 306 of Public Law 107–204 (116 Stat. 745 et seq.).

SEC. 705. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL IRA PAYMENTS IN CERTAIN BANKRUPTCY CASES.

(a) ALLOWANCE OF CONTRIBUTIONS.—Section 219(b)(5) of the Internal Revenue Code of 1986 (relating to deductible amount) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

''(C) CATCHUP CONTRIBUTIONS FOR CERTAIN INDIVIDUALS.—

''(i) IN GENERAL.—In the case of an applicable individual who elects to make a qualified retirement contribution in addition to the deductible amount determined under subparagraph (A)—

''(I) the deductible amount for any taxable year shall be increased by an amount equal to 3 times the applicable amount determined under subparagraph (B) for such taxable year, and

''(II) subparagraph (B) shall not apply.

''(ii) APPLICABLE INDIVIDUAL.—For purposes of this subparagraph, the term 'applicable individual' means, with respect to any taxable year, any individual who was a qualified participant in a qualified cash or deferred arrangement (as defined in section 401(k)) of an employer described in clause (iii) under which the employer matched at least 50 percent of the employee's contributions to such arrangement with stock of such employer.

''(iii) EMPLOYER DESCRIBED.—An employer is described in this clause if, in any taxable year preceding the taxable year described in clause (ii)—

''(I) such employer (or any controlling corporation of such employer) was a debtor in a case under title 11 of the United States Code, or similar Federal or State law, and

''(II) such employer (or any other person) was subject to an indictment or conviction resulting from business transactions related to such case.

''(iv) QUALIFIED PARTICIPANT.—For purposes of clause (ii), the term 'qualified participant' means any applicable individual who was a participant in the cash or deferred arrangement described in clause (i) on the date that is 6 months before the filing of the case described in clause (iii).

''(v) TERMINATION.—This subparagraph shall not apply to taxable years beginning after December 31, 2009.''

(b) SAVER'S CREDIT EXPANDED TO INCLUDE CATCHUP CONTRIBUTIONS.—

(1) IN GENERAL.—Section 25B of the Internal Revenue Code of 1986 (relating to credit for elective deferrals and IRA contributions by certain individuals) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) ADDITIONAL CREDIT FOR CERTAIN CATCHUP CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of an eligible individual who is an applicable individual under section 219(b)(5)(C) for any taxable year, the amount of the credit allowable under subsection (a) for the taxable year shall be increased by 50 percent of so much of the qualified retirement contributions (as defined in section 219(e)) of the individual for the taxable year as exceeds the deductible amount for the taxable year under section 219(b)(5) (without regard to subparagraphs (B) and (C) thereof).

''(2) COORDINATION WITH OTHER CONTRIBUTIONS.—For purposes of this section—

''(A) any contribution to which this subsection applies shall not be taken into account in determining the amount of the credit allowable under subsection (a) without regard to this subsection, and

''(B) in applying any reduction in qualified retirement savings contributions under subsection (d)(2), the reduction shall be applied first to qualified retirement savings contributions other than contributions to which this subsection applies.''.

(2) EXTENSION OF TERMINATION DATE FOR CATCHUP CREDIT.—Section 25B(i) of such Code, as redesignated by paragraph (1), is amended by inserting ''(December 31, 2007, in the case of the portion of the credit allowed under subsection (h))'' after ''2006''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 706. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING SUSPENSION OF ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS.

(a) IN GENERAL.—Section 404(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting ''(A)'' after ''(c)(1)'',

(2) in subparagraph (A)(ii) (as redesignated by paragraph (1)), by inserting before the period the following: '', except that this clause shall not apply in connection with such participant or beneficiary for any blackout period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary'', and

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

''(B)(i) If a person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing and implementing the blackout period, any person who is otherwise a fiduciary shall not be liable under this title for any loss occurring during such period as a result of any exercise by the participant or beneficiary of control over assets in his or her account before the period. Matters to be considered in determining whether such person has satisfied the requirements of this title include, but are not limited to, whether such person—

''(I) has considered the reasonableness of the expected blackout period,

''(II) has provided the notice required under section 101(i)(1), and

''(III) has acted in accordance with the requirements of subsection (a) in determining whether to enter into the blackout period.

''(ii) For purposes of this subsection, if a blackout period arises in connection with a change in the investment options offered under the plan, a participant or beneficiary shall be deemed to have exercised control over the assets in his or her account prior to the blackout period if, after notice of the change in investment options is given to such participant or beneficiary, assets in the account of the participant or beneficiary are transferred—

''(I) to plan investment options in accordance with the affirmative election of the participant or beneficiary; or

''(II) in the absence of such an election and in the case in which fiduciary relief was provided under this subsection for the prior investment options, to plan investment options in the manner set forth in such notice.

''(C) For purposes of this paragraph, the term 'blackout period' has the meaning given such term by section 101(i)(7).''

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall issue interim final regulations providing guidance, including safe harbors, on how plan sponsors or any other affected fiduciaries can satisfy their fiduciary responsibilities during any blackout period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''December 31, 2005'' the earlier of—

(A) the later of—

(i) December 31, 2006, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2007.

SEC. 707. INCREASE IN MAXIMUM BOND AMOUNT.

(a) IN GENERAL.—Section 412(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following: ''In the case of a plan that holds employer securities (within the meaning of section 407(d)(1)), this subsection shall be applied by substituting '$1,000,000' for '$500,000' each place it appears.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2005.

TITLE VIII—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

SEC. 801. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE ADEQUATE INVESTMENT EDUCATION TO PARTICIPANTS.

(a) ADEQUATE INVESTMENT EDUCATION.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024), as amended by this Act, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following:

''(n) BASIC INVESTMENT GUIDELINES.—

''(1) IN GENERAL.—The administrator of an individual account plan (other than a one-participant retirement plan described in subsection (i)(8)(B)) shall furnish at least once each year to each participant or beneficiary who has the right to direct the investment of assets in his or her account the model form relating to basic investment guidelines which is described in paragraph (2).

''(2) MODEL FORM.—

''(A) IN GENERAL.—The Secretary shall, in consultation with the Secretary of Treasury, develop and make available to individual account plans for distribution under paragraph (1) a model form containing basic guidelines for investing for retirement. Except as otherwise provided by the Secretary, such guidelines shall include—

''(i) information on the benefits of diversification,

''(ii) information on the essential differences, in terms of risk and return, of pension plan investments, including stocks, bonds, mutual funds, and money market investments,

''(iii) information on how an individual's pension plan investment allocations may differ depending on the individual's age and years to retirement and on other factors determined by the Secretary,

''(iv) sources of information where individuals may learn more about pension rights, individual investing, and investment advice, and

''(v) such other information related to individual investing as the Secretary determines appropriate.

''(B) CALCULATION INFORMATION.—The model form under subparagraph (A) shall include addresses for Internet sites, and a worksheet, which a participant or beneficiary may use to calculate—

''(i) the retirement age value of the participant's or beneficiary's nonforfeitable pension benefits under the plan (expressed as an annuity amount and determined by reference to varied historical annual rates of return and annuity interest rates), and

''(ii) other important amounts relating to retirement savings, including the amount which a participant or beneficiary would be required to save annually to provide a retirement income equal to various percentages of their current salary (adjusted for expected growth prior to retirement).

The Secretary shall develop an Internet site which an individual may use in making such calculations and the address for such site shall be included with the form.

''(C) PUBLIC COMMENT.—The Secretary of Labor shall provide at least 90 days for public comment before publishing final notice of the model form.

''(3) RULES RELATING TO FORM AND STATEMENT.—The model form under paragraph (2)—

''(A) shall be written in a manner calculated to be understood by the average plan participant, and

''(B) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries.''

(2) ENFORCEMENT.—Section 502(c)(7) of such Act (29 U.S.C. 1132(c)(7)), as amended by this Act, is amended by striking ''or (l)'' and inserting '', (l), or (n)''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''December 31, 2006'' the earlier of—

(A) the later of—

(i) December 31, 2007, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2008.

SEC. 802. INDEPENDENT INVESTMENT ADVICE PROVIDED TO PLAN PARTICIPANTS.

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e) INDEPENDENT INVESTMENT ADVISER.—

''(1) IN GENERAL.—In the case of an individual account plan which permits a plan participant or beneficiary to direct the investment of the assets in his or her account, if a plan sponsor or other person who is a fiduciary designates and monitors a qualified investment adviser pursuant to the requirements of paragraph (3), such fiduciary—

''(A) shall be deemed to have satisfied the requirements under this section for the prudent designation and periodic review of an investment adviser with whom the plan sponsor or other person who is a fiduciary enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii),

''(B) shall not be liable under this section for any loss, or by reason of any breach, with respect to the provision of investment advice given by such adviser to any plan participant or beneficiary, and

''(C) shall not be liable for any co-fiduciary liability under subsections (a)(2) and (b) of section 405 with respect to the provision of investment advice given by such adviser to any plan participant or beneficiary.

''(2) QUALIFIED INVESTMENT ADVISER.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified investment adviser' means, with respect to a plan, a person—

''(i) who is a fiduciary of the plan by reason of the provision of investment advice by such person to a plan participant or beneficiary;

''(ii) who—

''(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

''(II) is registered as an investment adviser under the laws of the State in which such adviser maintains the principal office and place of business of such adviser, but only if such State laws are consistent with section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a),

''(III) is a bank or similar financial institution referred to in section 408(b)(4),

''(IV) is an insurance company qualified to do business under the laws of a State, or

''(V) is any other comparably qualified entity which satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection, and

''(iii) who meets the requirements of subparagraph (B).

''(B) ADVISER REQUIREMENTS.—The requirements of this subparagraph are met if every individual employed (or otherwise compensated) by a person described in subparagraph (A)(ii) who provides investment advice on behalf of such person to any plan participant or beneficiary is—

''(i) an individual described in subclause (I) of subparagraph (A)(ii),

''(ii) an individual described in subclause (II) of subparagraph (A)(ii), but only if such State has an examination requirement to qualify for registration,

''(iii) registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or ''(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection.

''(3) VERIFICATION REQUIREMENTS.—The requirements of this paragraph are met if—

''(A) the plan sponsor or other person who is a fiduciary in designating a qualified investment adviser receives at the time of the designation, and annually thereafter, a written verification from the qualified investment adviser that the investment adviser—

''(i) is and remains a qualified investment adviser,

''(ii) acknowledges that the investment adviser is a fiduciary with respect to the plan and is solely responsible for its investment advice,

''(iii) has reviewed the plan documents (including investment options) and has determined that its relationship with the plan and the investment advice provided to any plan participant or beneficiary, including any fees or other compensation it will receive, will not constitute a violation of section 406,

''(iv) will, in providing investment advice to any participant or beneficiary, consider any employer securities or employer real property allocated to his or her account, and

''(v) has the necessary insurance coverage (as determined by the Secretary) for any claim by any plan participant or beneficiary,

''(B) the plan sponsor or other person who is a fiduciary in designating a qualified investment adviser reviews the documents described in paragraph (4) provided by such adviser and determines that there is no material reason not to enter into an arrangement for the provision of advice by such qualified investment adviser, and

''(C) the plan sponsor or other person who is a fiduciary in designating a qualified investment adviser, within 30 days of having information brought to its attention that the investment adviser is no longer qualified or that a substantial number of plan participants or beneficiaries have raised concerns about the services being provided by the investment adviser—

''(i) investigates such information and concerns, and

''(ii) determines that there is no material reason not to continue the designation of the adviser as a qualified investment adviser.

''(4) DOCUMENTATION.—A qualified investment adviser shall provide the following documents to the plan sponsor or other person who is a fiduciary in designating the adviser:

''(A) The contract with the plan sponsor or other person who is a fiduciary for the services to be provided by the investment adviser to the plan participants and beneficiaries.

''(B) A disclosure as to any fees or other compensation that will be received by the investment adviser for the provision of such investment advice and as to any fees and other compensation that will be received as a result of a participant's investment election.

''(C) The Uniform Application for Investment Adviser Registration as filed with the Securities and Exchange Commission or a substantially similar disclosure application as determined by and filed with the Secretary.

''(5) TREATMENT AS FIDUCIARY.—Any qualified investment adviser that acknowledges it is a fiduciary pursuant to paragraph (3)(A)(ii) shall be deemed a fiduciary under this part with respect to the provision of investment advice to a plan participant or beneficiary.''

(b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act is amended by inserting ''(other than a qualified investment adviser)'' after ''fiduciary''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to investment advisers designated after the date of the enactment of this Act.

SEC. 803. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—

''(A) IN GENERAL.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by an eligible investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

''(B) LIMITATION.—The maximum amount which may be excluded under subparagraph (A) with respect to any employee for any taxable year shall not exceed $1,000.

''(C) ELIGIBLE INVESTMENT ADVISER.—For purposes of this paragraph, the term 'eligible investment adviser' means, with respect to a plan, a person—

''(i) who—

''(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

''(II) is registered as an investment adviser under the laws of the State in which such adviser maintains the principal office and place of business of such adviser, but only if such State laws are consistent with section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a),

''(III) is a bank or similar financial institution referred to in section 408(b)(4),

''(IV) is an insurance company qualified to do business under the laws of a State, or

''(V) is any other comparably qualified entity which satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection, and

''(ii) who meets the requirements of subparagraph (D).

''(D) ADVISER REQUIREMENTS.—The requirements of this subparagraph are met if every individual employed (or otherwise compensated) by a person described in subparagraph (C)(i) who provides investment advice on behalf of such person to any plan participant or beneficiary is—

''(i) an individual described in subclause (I) of subparagraph (C)(i),

''(ii) an individual described in subclause (II) of subparagraph (C)(i), but only if such State has an examination requirement to qualify for registration,

''(iii) registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

''(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this paragraph.

''(E) TERMINATION.—This paragraph shall not apply to taxable years beginning after December 31, 2010.''

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(2) Section 414(s)(2) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(3) Section 415(c)(3)(D)(ii) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 804. INCREASE IN PENALTIES FOR COERCIVE INTERFERENCE WITH EXERCISE OF ERISA RIGHTS.

(a) IN GENERAL.—Section 511 of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1141) is amended—

(1) by striking ''$10,000'' and inserting ''$100,000'', and

(2) by striking ''one year'' and inserting ''10 years''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to violations occurring on and after the date of the enactment of this Act.

SEC. 805. ADMINISTRATIVE PROVISION.

The Secretary of the Treasury shall have the authority to prescribe rules applicable to the statements required under sections 101(j) and 101(m) of the Employee Retirement Income Security Act of 1974 (as added by this Act).

TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

SEC. 901. REGULATIONS ON TIME AND ORDER OF ISSUANCE OF DOMESTIC RELATIONS ORDERS.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

(B) of the time at which it is issued; and

(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders, including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code.

SEC. 902. ENTITLEMENT OF DIVORCED SPOUSES TO RAILROAD RETIREMENT ANNUITIES INDEPENDENT OF ACTUAL ENTITLEMENT OF EMPLOYEE.

(a) IN GENERAL.—Section 2 of the Railroad Retirement Act of 1974 (45 U.S.C. 231a) is amended—

(1) in subsection (c)(4)(i), by striking ''(A) is entitled to an annuity under subsection (a)(1) and (B)''; and

(2) in subsection (e)(5), by striking ''or divorced wife'' the second place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 903. EXTENSION OF TIER II RAILROAD RETIREMENT BENEFITS TO SURVIVING FORMER SPOUSES PURSUANT TO DIVORCE AGREEMENTS.

(a) IN GENERAL.—Section 5 of the Railroad Retirement Act of 1974 (45 U.S.C. 231d) is amended by adding at the end the following:

''(d) Notwithstanding any other provision of law, the payment of any portion of an annuity computed under section 3(b) to a surviving former spouse in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree shall not be terminated upon the death of the individual who performed the service with respect to which such annuity is so computed unless such termination is otherwise required by the terms of such court decree.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 904. REQUIREMENT FOR ADDITIONAL SURVIVOR ANNUITY OPTION.

(a) AMENDMENTS TO INTERNAL REVENUE CODE.—

(1) ELECTION OF SURVIVOR ANNUITY.—Section 417(a)(1)(A) of the Internal Revenue Code of 1986 is amended—

(A) in clause (i), by striking '', and'' and inserting a comma;

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting after clause (i) the following:

''(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and''.

(2) DEFINITION.—Section 417 of such Code is amended by adding at the end the following:

''(g) DEFINITION OF QUALIFIED OPTIONAL SURVIVOR ANNUITY.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified optional survivor annuity' means an annuity—

''(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

''(B) which is the actuarial equivalent of a single annuity for the life of the participant. Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

''(2) APPLICABLE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of paragraph (1), if the survivor annuity percentage—

''(i) is less than 75 percent, the applicable percentage is 75 percent, and

''(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

''(B) SURVIVOR ANNUITY PERCENTAGE.—For purposes of subparagraph (A), the term 'survivor annuity percentage' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.''

(3) NOTICE.—Section 417(a)(3)(A)(i) of such Code is amended by inserting ''and of the qualified optional survivor annuity'' after ''annuity''.

(b) AMENDMENTS TO ERISA.—

(1) ELECTION OF SURVIVOR ANNUITY.—Section 205(c)(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is amended—

(A) in clause (i), by striking '', and'' and inserting a comma;

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting after clause (i) the following:

''(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and''.

(2) DEFINITION.—Section 205(d) of such Act (29 U.S.C. 1055(d)) is amended—

(A) by inserting ''(1)'' after ''(d)'';

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) by adding at the end the following:

''(2)(A) For purposes of this section, the term 'qualified optional survivor annuity' means an annuity—

''(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

''(ii) which is the actuarial equivalent of a single annuity for the life of the participant. Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

''(B)(i) For purposes of subparagraph (A), if the survivor annuity percentage—

''(I) is less than 75 percent, the applicable percentage is 75 percent, and

''(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

''(ii) For purposes of clause (i), the term 'survivor annuity percentage' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.''

(3) NOTICE.—Section 205(c)(3)(A)(i) of such Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by inserting ''and of the qualified optional survivor annuity'' after ''annuity''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, the amendments made by this section shall apply to the first plan year beginning on or after the earlier of—

(A) the later of—

(i) January 1, 2006, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

(B) January 1, 2007.

TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

SEC. 1001. CLARIFICATIONS REGARDING PURCHASE OF PERMISSIVE SERVICE CREDIT.

(a) IN GENERAL.—Section 415(n) of the Internal Revenue Code of 1986 (relating to special rules for the purchase of permissive service credit) is amended—

(1) by striking ''an employee'' in paragraph (1) and inserting ''a participant'', and

(2) by adding at the end of paragraph (3)(A) the following new flush sentence

''Such term may include service credit for periods for which there is no performance of service, and notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.''

(b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE TRANSFERS.—Section 415(n)(3) of such Code is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE TRANSFERS.—In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

''(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

''(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.''

(c) NONQUALIFIED SERVICE.—Section 415(n)(3) of such Code is amended—

(1) by striking ''permissive service credit attributable to nonqualified service'' each place it appears in subparagraph (B) and inserting ''nonqualified service credit'',

(2) by striking so much of subparagraph (C) as precedes clause (i) and inserting:

''(C) NONQUALIFIED SERVICE CREDIT.—For purposes of subparagraph (B), the term 'nonqualified service credit' means permissive service credit other than that allowed with respect to—'', and

(3) by striking ''elementary or secondary education (through grade 12), as determined under State law'' and inserting ''elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall take effect as if included in the amendments made by section 1526 of the Taxpayer Relief Act of 1997.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect as if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 1002. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN ANNUITY CONTRACTS.

(a) IN GENERAL.—Subparagraph (A) of section 402(c)(2) (relating to the maximum amount which may be rolled over) is amended—

(1) by striking ''which is part of a plan which is a defined contribution plan and which agrees to separately account'' and inserting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting''; and

(2) by inserting ''(and earnings thereon)'' after ''so transferred''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

SEC. 1003. CLARIFICATION OF MINIMUM DISTRIBUTION RULES FOR GOVERNMENTAL PLANS.

The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).

SEC. 1004. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.

(a) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions) is amended by adding at the end the following new paragraph:

''(10) DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

''(A) IN GENERAL.—In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting 'age 50' for 'age 55'.

''(B) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this paragraph, the term 'qualified public safety employee' means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 1005. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

''(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

''(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

''(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

''(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.''

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

SEC. 1006. FASTER VESTING OF EMPLOYER NONELECTIVE CONTRIBUTIONS.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Paragraph (2) of section 411(a) of the Internal Revenue Code of 1986 (relating to employer contributions) is amended to read as follows:

''(2) EMPLOYER CONTRIBUTIONS.—

''(A) DEFINED BENEFIT PLANS.—

''(i) IN GENERAL.—In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) 5-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

''(B) DEFINED CONTRIBUTION PLANS.—

''(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) 2 TO 6 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.''.

(2) CONFORMING AMENDMENT.—Section 411(a) of such Code (relating to general rule for minimum vesting standards) is amended by striking paragraph (12).

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

''(2)(A)(i) In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

''(B)(i) In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.''.

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2005.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2006; or

(B) January 1, 2008.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

(A) the date on which the loan is fully repaid, or

(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.

SEC. 1007. ALLOW DIRECT ROLLOVERS FROM RETIREMENT PLANS TO ROTH IRAS.

(a) IN GENERAL.—Subsection (e) of section 408A of the Internal Revenue Code of 1986 (defining qualified rollover contribution) is amended to read as follows:

''(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''

(b) CONFORMING AMENDMENTS.—

(1) Section 408A(c)(3)(B) of such Code is amended—

(A) in the text by striking ''individual retirement plan'' and inserting ''an eligible retirement plan (as defined by section 402(c)(8)(B))'', and

(B) in the heading by striking ''IRA'' and inserting ''ELIGIBLE RETIREMENT PLAN''.

(2) Section 408A(d)(3) of such Code is amended—

(A) in subparagraph (A), by striking ''section 408(d)(3)'' inserting ''sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)'',

(B) in subparagraph (B), by striking ''individual retirement plan'' and inserting ''eligible retirement plan (as defined by section 402(c)(8)(B))'',

(C) in subparagraph (D), by inserting ''or 6047'' after ''408(i)'',

(D) in subparagraph (D), by striking ''or both'' and inserting ''persons subject to section 6047(d)(1), or all of the foregoing persons'', and

(E) in the heading, by striking ''IRA'' and inserting ''ELIGIBLE RETIREMENT PLAN''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

SEC. 1008. ELIMINATION OF HIGHER PENALTY ON CERTAIN SIMPLE PLAN DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (t) of section 72 of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans), as amended by section 1004, is amended by striking paragraph (6) and redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 72(t)(2)(E) of such Code is amended by striking ''paragraph (7)'' and inserting ''paragraph (6)''.

(2) Section 72(t)(2)(F) of such Code is amended by striking ''paragraph (8)'' and inserting ''paragraph (7)''.

(3) Section 408(d)(3)(G) of such Code is amended by striking ''applies'' and inserting ''applied on the day before the date of the enactment of the Pension Security and Transparency Act of 2005)''.

(4) Section 457(a)(2) of such Code is amended by striking ''section 72(t)(9)'' and inserting ''section 72(t)(8)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2005.

SEC. 1009. SIMPLE PLAN PORTABILITY.

(a) REPEAL OF LIMITATION.—Paragraph (3) of section 408(d) of the Internal Revenue Code of 1986 (relating to rollover contributions), as amended by this Act, is amended by striking subparagraph (G) and redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2005.

SEC. 1010. ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS.

An individual shall not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996.

SEC. 1011. TRANSFERS TO THE PBGC.

(a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause (i) of section 401(a)(31)(B) of the Internal Revenue Code of 1986 (relating to general rule for certain mandatory distributions) is amended by inserting ''to the Pension Benefit Guaranty Corporation in accordance with section 4050(e) of the Employee Retirement Income Security Act of 1974 or'' after ''such transfer''.

(b) TAX TREATMENT OF DISTRIBUTIONS.—Subparagraph (B) of section 401(a)(31) of such Code is amended by adding at the end the following new clause:

''(iii) INCOME TAX TREATMENT OF TRANSFERS TO PBGC.—For purposes of determining the income tax treatment relating to transfers to the Pension Benefit Guaranty Corporation under clause (i)—

''(I) the transfer of amounts to the Pension Benefit Guaranty Corporation pursuant to clause (i) shall be treated as a transfer to an individual retirement plan under such clause, and

''(II) the distribution of such amounts from the Pension Benefit Guaranty Corporation shall be treated as a distribution from an individual retirement plan.''

(c) MISSING PARTICIPANTS AND BENEFICIARIES.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350), as amended by section 1012, is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

''(e) INVOLUNTARY CASHOUTS.—

''(1) PAYMENT BY THE CORPORATION.—If benefits under a plan described in paragraph (3) were transferred to the corporation under section 401(a)(31)(B) of the Internal Revenue Code of 1986, the corporation shall, upon application filed by the participant or beneficiary with the corporation in such form and manner as may be prescribed in regulations of the corporation, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

''(A) in a single sum (plus interest), or

''(B) in such other form as is specified in regulations of the corporation.

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (3) shall, upon a transfer of benefits to the corporation under section 401(a)(31)(B) of such Code, provide the corporation information with respect to benefits of the participant or beneficiary so transferred.

''(3) PLANS DESCRIBED.—A plan is described in this paragraph if the plan is a pension plan (within the meaning of section 3(2))—

''(A) which provides for mandatory distributions under section 401(a)(31)(B) of the Internal Revenue Code of 1986, and

''(B) which is not a plan described in paragraphs (2) through (11) of section 4021(b).

''(4) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (3).

''(f) AUTHORITY TO CHARGE FEE.—The corporation may charge a reasonable fee for costs incurred in connection with the transfer and management of amounts transferred to the corporation under this section. Such fee may be imposed on the transferor and may be deducted from amounts so transferred.''

(d) EFFECTIVE DATES.—

(1) INTERNAL REVENUE CODE PROVISIONS.—The amendments made by subsections (a) and (b) shall take effect as if included in the amendments made by section 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

(2) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVISIONS.—The amendments made by subsection (c) shall apply to distributions made after final regulations implementing subsections (e) and (f) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (c)) are prescribed.

(3) REGULATIONS.—The Pension Benefit Guaranty Corporation shall issue regulations necessary to carry out the amendments made by subsection (c) not later than December 31, 2006.

SEC. 1012. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

''(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

''(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

''(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

''(A) to the corporation, or

''(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

''(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

''(A) in a single sum (plus interest), or

''(B) in such other form as is specified in regulations of the corporation.

''(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

''(A) the plan is a pension plan (within the meaning of section 3(2))—

''(i) to which the provisions of this section do not apply (without regard to this subsection), and

''(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

''(B) at the time the assets are to be distributed upon termination, the plan—

''(i) has missing participants, and

''(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

''(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).''

(b) CONFORMING AMENDMENTS.—Section 206(f) of such Act (29 U.S.C. 1056(f)) is amended—

(1) by striking ''title IV'' and inserting ''section 4050''; and

(2) by striking ''the plan shall provide that,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 1013. MODIFICATIONS OF RULES GOVERNING HARDSHIPS AND UNFORSEEN FINANCIAL EMERGENCIES.

Within 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.

TITLE XI—ADMINISTRATIVE PROVISIONS

SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury shall have full authority to establish and implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

(b) IMPROVEMENTS.—The Secretary of the Treasury shall continue to supdate and improve the Employee Plans Compliance Resolution System (or any successor program), giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 1102. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Section 417(a)(6)(A) of the Internal Revenue Code of 1986 is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 by substituting ''180 days'' for ''90 days'' each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—

(A) IN GENERAL.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 relating to sections 203(e) and 205 of such Act by substituting ''180 days'' for ''90 days'' each place it appears.

(3) EFFECTIVE DATE.—The amendments and modifications made or required by this subsection shall apply to years beginning after December 31, 2005.

(b) NOTIFICATION OF RIGHT TO DEFER.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2005.

(B) REASONABLE NOTICE.—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205 of such Act with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements.

SEC. 1103. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''one-participant retirement plan'' means a retirement plan with respect to which the following requirements are met:

(A) on the first day of the plan year—

(i) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

(ii) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

(B) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

(D) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) the plan does not cover a business that uses the services of leased employees (within the meaning of section 414(n) of such Code).

For purposes of this paragraph, the term ''partner'' includes a 2-percent shareholder (as defined in section 1372(b) of such Code) of an S corporation.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2006.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the case of plan years beginning after December 31, 2006, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 participants on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

SEC. 1104. VOLUNTARY EARLY RETIREMENT INCENTIVE AND EMPLOYMENT RETENTION PLANS MAINTAINED BY LOCAL EDUCATIONAL AGENCIES AND OTHER ENTITIES.

(a) VOLUNTARY EARLY RETIREMENT INCENTIVE PLANS.—

(1) TREATMENT AS PLAN PROVIDING SEVERANCE PAY.—Section 457(e)(11) of the Internal Revenue Code of 1986 (relating to certain plans excluded) is amended by adding at the end the following new subparagraph:

''(D) CERTAIN VOLUNTARY EARLY RETIREMENT INCENTIVE PLANS.—

''(i) IN GENERAL.—If an applicable voluntary early retirement incentive plan—

''(I) makes payments or supplements as an early retirement benefit, a retirement-type subsidy, or a benefit described in the last sentence of section 411(a)(9), and

''(II) such payments or supplements are made in coordination with a defined benefit plan which is described in section 401(a) and includes a trust exempt from tax under section 501(a) and which is maintained by an eligible employer described in paragraph (1)(A) or by an education association described in clause (ii)(II),

such applicable plan shall be treated for purposes of subparagraph (A)(i) as a bona fide severance pay plan with respect to such payments or supplements to the extent such payments or supplements could otherwise have been provided under such defined benefit plan (determined as if section 411 applied to such defined benefit plan).

''(ii) APPLICABLE VOLUNTARY EARLY RETIREMENT INCENTIVE PLAN.—For purposes of this subparagraph, the term 'applicable voluntary early retirement incentive plan' means a voluntary early retirement incentive plan maintained by—

''(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), or

''(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c) (5) or (6) and exempt from tax under section 501(a).''

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(*l*)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(*l*)(1)) is amended—

(A) by inserting ''(A)'' after ''(1)'',

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by redesignating clauses (i) and (ii) of subparagraph (B) (as in effect before the amendments made by subparagraph (B)) as subclauses (I) and (II), respectively, and

(D) by adding at the end the following:

''(B) A voluntary early retirement incentive plan that—

''(i) is maintained by—

''(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), or

''(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c) (5) or (6) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code, and

''(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of such Code or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of section 4(l)(2) of the Age Discrimination in Employment Act (29 U.S.C. 623(l)(2)).''

(b) EMPLOYMENT RETENTION PLANS.—

(1) IN GENERAL.—Section 457(f)(2) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking ''and'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', and'', and by adding at the end the following:

''(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.''

(2) DEFINITIONS AND RULES RELATING TO EMPLOYMENT RETENTION PLANS.—Section 457(f)

of such Code is amended by adding at the end the following new paragraph:

''(4) EMPLOYMENT RETENTION PLANS.—For purposes of paragraph (2)(F)—

''(A) IN GENERAL.—The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

''(B) OTHER RULES.—

''(i) LIMITATION.—Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

''(ii) TREATMENT.—A plan shall not be treated for purposes of this title as providing for the deferral of compensation for any year with respect to the portion of the plan described in subparagraph (A).

''(C) APPLICABLE EMPLOYMENT RETENTION PLAN.—The term 'applicable employment retention plan' means an employment retention plan maintained by—

''(i) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), or

''(ii) an education association which principally represents employees of 1 or more agencies described in clause (i) and which is described in section 501(c) (5) or (6) and exempt from taxation under section 501(a).

''(D) EMPLOYMENT RETENTION PLAN.—The term 'employment retention plan' means a plan to pay, upon termination of employment, compensation to an employee of a local educational agency or education association described in subparagraph (C) for purposes of—

''(i) retaining the services of the employee, or

''(ii) rewarding such employee for the employee's service with 1 or more such agencies or associations.''

(c) COORDINATION WITH ERISA.—Section 3(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)(B)) is amended by adding at the end the following: ''An applicable voluntary early retirement incentive plan (as defined in section 457(e)(11)(D)(ii) of the Internal Revenue Code of 1986) making payments or supplements described in section 457(e)(11)(D)(i) of such Code, and an applicable employment retention plan (as defined in section 457(f)(4)(C) of such Code) making payments of benefits described in section 457(f)(4)(A) of such Code, shall, for purposes of this title, be treated as a welfare plan (and not a pension plan) with respect to such payments and supplements.''

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

(2) TAX AMENDMENTS.—The amendments made by subsections (a)(1) and (b) shall apply to taxable years ending after the date of the enactment of this Act.

(3) ERISA AMENDMENTS.—The amendment made by subsection (c) shall apply to plan years ending after the date of the enactment of this Act.

(4) CONSTRUCTION.—Nothing in the amendments made by this section shall alter or affect the construction of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, or the Age Discrimination in Employment Act of 1967 as applied to any plan, arrangement, or conduct to which such amendments do not apply.

SEC. 1105. NO REDUCTION IN UNEMPLOYMENT COMPENSATION AS A RESULT OF PENSION ROLLOVERS.

(a) IN GENERAL.—Section 3304(a) of the Internal Revenue Code of 1986 (relating to requirements for State unemployment laws) is amended by adding at the end the following new flush sentence:

''Compensation shall not be reduced under paragraph (15) for any pension, retirement or retired pay, annuity, or similar payment which is not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to weeks beginning on or after the date of the enactment of this Act.

SEC. 1106. WITHHOLDING ON DISTRIBUTIONS FROM GOVERNMENTAL SECTION 457 PLANS.

(a) IN GENERAL.—Section 641(f) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by adding at the end the following new paragraph:

''(4) TRANSITION RULE FOR CERTAIN GOVERNMENTAL PLANS.—In the case of distributions from an eligible deferred compensation plan of an employer described in section 457(e)(1)(A) of the Internal Revenue Code of 1986 which are made after December 31, 2001, and which are part of a series of distributions which—

''(A) began before January 1, 2002, and

''(B) are payable for 10 years or less, the Internal Revenue Code of 1986 may be applied to such distributions without regard to the amendments made by subsection (a)(1)(D).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the provisions of section 641 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 1107. TREATMENT OF DEFINED BENEFIT PLAN AS GOVERNMENTAL PLAN.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974, an eligible defined benefit plan shall be treated as a governmental plan (within the meaning of section 414(d) of such Code and section 3(32) of such Act).

(b) ELIGIBLE DEFINED BENEFIT PLAN.—For purposes of this section, an eligible defined benefit plan is a defined benefit plan maintained by a nonprofit corporation which was—

(1) incorporated on September 16, 1998, under a State nonprofit corporation statute; and

(2) organized for the express purpose of supporting the missions and goals of a public corporation which—

(A) was created by a State statute effective on July 1, 1995;

(B) is a governmental entity under State law; and

(C) is a member of the nonprofit corporation.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any year beginning before, on, or after the date of the enactment of this Act.

SEC. 1108. INCREASING PARTICIPATION IN CASH OR DEFERRED PLANS THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

''(13) NONDISCRIMINATION REQUIREMENTS FOR AUTOMATIC CONTRIBUTION TRUSTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement constitutes an automatic contribution trust.

''(B) AUTOMATIC CONTRIBUTION TRUST.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'automatic contribution trust' means an arrangement—

''(I) except as provided in clauses (ii) and (iii), under which each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the applicable percentage of the employee's compensation, and

''(II) which meets the requirements of subparagraphs (C), (D), (E), and (F).

''(ii) EXCEPTION FOR EXISTING EMPLOYEES.—In the case of any employee—

''(I) who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust, and

''(II) whose rate of contribution immediately before such first date was less than the applicable percentage for the employee,

clause (i)(I) shall not apply to such employee until the date which is 1 year after such first date (or such earlier date as the employee may elect).

''(iii) ELECTION OUT.—Each employee eligible to participate in the arrangement may specifically elect not to have contributions made under clause (i), and such clause shall cease to apply to compensation paid on or after the effective date of the election.

''(iv) APPLICABLE PERCENTAGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'applicable percentage' means, with respect to any employee, the uniform percentage (not less than 3 percent) determined under the arrangement. In the case of an employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust, the initial applicable percentage shall in no event be less than the percentage in effect with respect to the employee under the arrangement immediately before the employee first begins participation in the automatic contribution trust.

''(II) INCREASE IN PERCENTAGE.—In the case of the second plan year beginning after the first date on which the election under clause (i)(I) is in effect with respect to the employee and any succeeding plan year, the applicable percentage shall be a percentage (not greater than 10 percent or such higher uniform percentage determined under the arrangement) equal to the sum of the applicable percentage for the employee as of the close of the preceding plan year plus 1 percentage point (or such higher percentage specified by the plan). A plan may elect to provide that, in lieu of any increase under the preceding sentence, the increase in the applicable percentage required under this subclause shall occur after each increase in compensation an employee receives on or after the first day of such second plan year and that the applicable percentage after each such increase in compensation shall be equal to the applicable percentage for the employee immediately before such increase in compensation plus 1 percentage point (or such higher percentage specified by the plan).

''(C) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

''(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 7 percent of compensation; or

''(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation,

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of subclause (I). The rules of paragraph (12)(E)(ii) shall apply for purposes of subclauses (I) and (II).

''(ii) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under clause (i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

''(D) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (B)(i) applies—

''(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf, and how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

''(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

''(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year (or if the plan elects to change the applicable percentage after any increase in compensation, before the increase), given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

''(E) PARTICIPATION, WITHDRAWAL, AND VESTING REQUIREMENTS.—The requirements of this subparagraph are met if—

''(i) the arrangement requires that each employee eligible to participate in the arrangement (determined without regard to any minimum service requirement otherwise applicable under section 410(a) or the plan) commences participation in the arrangement no later than the 1st day of the 1st calendar quarter beginning after the date on which employee first becomes so eligible,

''(ii) the withdrawal requirements of paragraph (2)(B) are met with respect to all employer contributions (including matching and elective contributions) taken into account in determining whether the arrangement meets the requirements of subparagraph (C), and

''(iii) the arrangement requires that an employee's right to the accrued benefit derived from employer contributions described in clause (ii) (other than elective contributions) is nonforfeitable after the employee has completed at least 2 years of service.

''(F) CERTAIN WITHDRAWALS MUST BE ALLOWED.—Notwithstanding any other provision of this subsection, the requirements of this subparagraph are met if the arrangement allows employees to elect to make permissible withdrawals in accordance with section 414(w).''

(b) MATCHING CONTRIBUTIONS.—Section 401(m) of the Internal Revenue Code of 1986 (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

''(12) ALTERNATE METHOD FOR AUTOMATIC CONTRIBUTION TRUSTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

''(A) meets the contribution requirements of subparagraphs (B)(i) and (C) of subsection (k)(13);

''(B) meets the notice requirements of subparagraph (D) of subsection (k)(13); and

''(C) meets the requirements of paragraph (11)(B) (ii) and (iii).''.

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(1) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of the Internal Revenue Code of 1986 is amended by inserting ''or 401(k)(13)'' after ''section 401(k)(12)''.

(2) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(m)(12)'' after ''section 401(m)(11)''.

(d) SECTION 403(b) CONTRACTS.—Paragraph (11) of section 401(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(C) SECTION 403(b) CONTRACTS.—An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).''.

(e) PREEMPTION OF CONFLICTING STATE REGULATION.—Section 514 of the Employee Retirement Income Security of 1974 (29 U.S.C. 1144) is amended by inserting at the end the following new subsection:

''(e) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, any law of a State shall be superseded if it would directly or indirectly prohibit or restrict the inclusion in any plan of an eligible automatic contribution arrangement.

''(2) ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection, the term 'eligible automatic contribution arrangement' means an arrangement—

''(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

''(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage),

''(C) under which contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary under section 404(c)(4), and

''(D) which meets the requirements of paragraph (3).

''(3) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The administrator of an individual account plan shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (2) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

''(B) TIME AND FORM OF NOTICE.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

''(i) the notice includes a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

''(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

''(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.''.

(f) TREATMENT OF WITHDRAWALS OF CONTRIBUTIONS DURING FIRST 60 DAYS.—Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

''(1) IN GENERAL.—If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

''(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

''(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

''(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

''(2) PERMISSIBLE WITHDRAWAL.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'permissible withdrawal' means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

''(i) is made pursuant to an election by an employee, and

''(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

''(B) TIME FOR MAKING ELECTION.—Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 60 days after the date of the first elective contribution with respect to the employee under the arrangement.

''(C) AMOUNT OF DISTRIBUTION.—Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

''(3) ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection, the term 'eligible automatic contribution arrangement' means an arrangement—

''(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

''(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage),

''(C) under which contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(4) of the Employee Retirement Income Security Act of 1974, and

''(D) which meets the requirements of paragraph (4).

''(4) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

''(B) TIME AND FORM OF NOTICE.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

''(i) the notice includes a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

''(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

''(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SECTION 403(b) CONTRACTS.—The amendments made by subsection (d) shall apply to years ending after the date of the enactment of this Act.

SEC. 1109. TREATMENT OF INVESTMENT OF ASSETS BY PLAN WHERE PARTICIPANT FAILS TO EXERCISE INVESTMENT ELECTION.

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

''(4) DEFAULT INVESTMENT ARRANGEMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1), a participant in an individual account plan meeting the notice requirements of subparagraph (B) shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant, are invested by the plan in accordance with regulations prescribed by the Secretary. The regulations under this subparagraph shall provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation, long-term capital appreciation, or a blend of both.

''(B) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if each participant—

''(I) receives, within a reasonable period of time before each plan year, a notice explaining the employee's right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant, such contributions and earnings will be invested, and

''(II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation.

''(ii) FORM OF NOTICE.—The requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 shall be met with respect to the notices described in this subparagraph.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) REGULATIONS.—Final regulations under section 404(c)(4)(A) of the Employee Retirement Income Security Act of 1974 (as added by this section) shall be issued no later than 6 months after the date of the enactment of this Act.

SEC. 1110. CLARIFICATION OF FIDUCIARY RULES.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue final regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan to a participant or beneficiary—

(1) is not subject to the safest available annuity standard under Interpretive Bulletin 95–1 (29 C.F.R. 2509.95–1), and

(2) is subject to all otherwise applicable fiduciary standards.

(b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

TITLE XII—UNITED STATES TAX COURT MODERNIZATION

SEC. 1200. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title 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.

SEC. 1201. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(h) ENTITLEMENT TO ANNUITY.—

''(1) IN GENERAL.—

''(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

''(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 20 percent of such average annual salary, divided by the number of such children.

''(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

''(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

''(ii) 40 percent of such average annual salary, divided by the number of such children.

''(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

''(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

''(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

''(3) TERMINATION OF ANNUITY.—

''(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

''(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

''(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

''(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

''(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

''(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

''(B) the amount of such salary deductions that were actually made before the date of the judge's death.''

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

''(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.''

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(i) DETERMINATIONS BY CHIEF JUDGE.—

''(1) DEPENDENCY AND DISABILITY.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an assassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

(1) by striking the subsection heading and inserting the following:

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''

SEC. 1202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 1203. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 1204. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''

SEC. 1205. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 1206. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(k) THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

''(i) retires under subsection (b), or

''(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

''(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

''(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

SEC. 1207. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

''(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under section 502(a)(5) of such Act shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 1208. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

''SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.''

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

''(a) APPOINTMENT, TENURE, AND REMOVAL.—

''(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

''(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.''

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking ''90'' and inserting ''92''.

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

''(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

''(2) TREATMENT OF UNUSED LEAVE.—

''(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

''(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

''(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.''

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''Magistrate Judges of the Tax Court''.

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''.

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 1209. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

''(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

''(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.''

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting the following:

''(b) ELECTION.—

''(1) JUDGES.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

''(A) 6 months after the date of the enactment of this paragraph,

''(B) the date the judge takes office, or

''(C) the date the judge marries.''

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''**AND MAGISTRATE JUDGES**'' after ''**JUDGES**''.

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting ''and magistrate judges'' after ''judges''.

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting ''or magistrate judge'' after ''judge'' each place it appears other than in the phrase ''chief judge'', and

(B) by inserting ''or magistrate judge's'' after ''judge's'' each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a) (6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 1210. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

''(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

''(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

''(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

''(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by 1/6 of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

''(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

''(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

''(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

''(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

''(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

''(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

''(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

''(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

''(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

''(C) retired pay under section 7447, or

''(D) retired pay under section 7296 of title 38, United States Code.

''(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

''(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

''(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

''(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

''(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

''(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

''(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

''(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

''(i) PAYMENTS PURSUANT TO COURT ORDER.—

''(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

''(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

''(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

''(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

''(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court receives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

''(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

''(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

''(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

''(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

''(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

''(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

''(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

''(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

''(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

''(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

''(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

''(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

''(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

''(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the first month following the month in which the election is made.

''(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

''(n) LUMP-SUM PAYMENTS.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

''(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

''(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

''(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

''(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

''(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

''(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

''(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

''(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

''(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity of a magistrate judge of the Tax Court shall be paid to that individual.

''(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

''(2) SPOUSES AND FORMER SPOUSES.—

''(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

''(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

''(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court approved property settlement agreement incident to such decree, if—

''(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

''(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

''(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

''(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

''(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

''(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

''(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

''(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

''(i) if the service covered thereby aggregates 1 year or less, or

''(ii) for the fractional part of a month in the total service.

''(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

''(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

''(3) UNFUNDED LIABILITY.—

''(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

''(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

''(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

''(ii) the balance in the Fund as of the date the unfunded liability is determined.

''(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

''(1) ELECTION TO CONTRIBUTE.—

''(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 611 of the Pension Security and Transparency Act of 2005 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

''(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

''(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

''(3) SPECIAL RULES.—

''(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

''(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

''(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

''(i) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 611 of the Pension Security and Transparency Act of 2005,

''(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 611 of the Pension Security and Transparency Act of 2005, or

''(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 611 of the Pension Security and Transparency Act of 2005.

''(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 611 of the Pension Security and Transparency Act of 2005 is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

''(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

''(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76 is amended by inserting after the item relating to section 7443A the following new item:

''Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 1211. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as

such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code. Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 1212. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

‘‘(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

‘‘(1) the aggregate of such periods in any 1 calendar year shall not (without such individual’s consent) exceed 90 calendar days, and

‘‘(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

‘‘(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

‘‘(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.’’

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

‘‘Sec. 7443C. Recall of magistrate judges of the Tax Court.’’.

SEC. 1213. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE XIII—OTHER PROVISIONS

Subtitle A—Administrative Provision

SEC. 1301. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under such Acts, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary of the Treasury may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subparagraph (B) shall be applied by substituting the date which is 2 years after the date otherwise applied under subparagraph (B).

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

SEC. 1302. AUTHORITY TO THE SECRETARY OF LABOR, SECRETARY OF THE TREASURY, AND THE PENSION BENEFIT GUARANTY CORPORATION TO POSTPONE CERTAIN DEADLINES.

The Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall exercise their authority under section 518 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1148) and section 7508A of the Internal Revenue Code of 1986 to postpone certain deadlines by reason of the Presidentially declared disaster areas in Louisiana, Mississippi, Alabama, Texas, Florida, or elsewhere, due to the effect of Hurricane Katrina, Rita, or Wilma. The Secretaries and the Executive Director of the Corporation shall issue guidance as soon as is practicable to plan sponsors and participants regarding extension of deadlines and rules applicable to these extraordinary circumstances. Nothing in this section shall be construed to relieve any plan sponsor from any requirement to pay benefits or make contributions under the plan of the sponsor.

Subtitle B—Governmental Pension Plan Equalization

SEC. 1311. DEFINITION OF GOVERNMENTAL PLAN.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 414(d) of the Internal Revenue Code of 1986 (definition of governmental plan) is amended by adding at the end the following: ‘‘The term ‘governmental plan’ includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law which is wholly owned or controlled by any of the foregoing.’’

(b) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32)) is amended by adding at the end the following: ‘‘The term ‘governmental plan’ includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.’’

SEC. 1312. EXTENSION TO ALL GOVERNMENTAL PLANS OF CURRENT MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (G) of section 401(a)(26) of the Internal Revenue Code of 1986 are each amended by striking ‘‘section 414(d))’’ and all that follows and inserting ‘‘section 414(d)).’’.

(2) Subparagraph (G) of section 401(k)(3) of such Code and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 (Public Law 105–34; 111 Stat. 1063) are each amended by striking ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 is amended by striking ''STATE AND LOCAL GOVERNMENTAL'' and inserting ''GOVERNMENTAL''.

(2) The heading of subparagraph (G) of section 401(a)(26) of such Code is amended by striking ''EXCEPTION FOR STATE AND LOCAL'' and inserting ''EXCEPTION FOR''.

(3) Section 401(k)(3)(G) of such Code is amended by inserting ''GOVERNMENTAL PLAN.—'' after ''(G)''.

SEC. 1313. CLARIFICATION THAT TRIBAL GOVERNMENTS ARE SUBJECT TO THE SAME DEFINED BENEFIT PLAN RULES AND REGULATIONS APPLIED TO STATE AND OTHER LOCAL GOVERNMENTS, THEIR POLICE AND FIREFIGHTERS.

(a) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) POLICE AND FIREFIGHTERS.—Subparagraph (H) section 415(b)(2) of the Internal Revenue Code of 1986 (defining participant) is amended—

(A) in clause (i), by striking ''State or political subdivision'' and inserting ''State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision''; and

(B) in clause (ii)(I), by striking ''State or political subdivision'' each place it appears and inserting ''State, Indian tribal government (as so defined), or any political subdivision''.

(2) STATE AND LOCAL GOVERNMENT PLANS.—

(A) IN GENERAL.—Subparagraph (A) of section 415(b)(10) of such Code (relating to limitation to equal accrued benefit) is amended—

(i) by inserting '', Indian tribal government (as defined in section 7701(a)(40)),'' after ''State'';

(ii) by inserting ''any'' before ''political subdivision''; and

(iii) by inserting ''any of'' before ''the foregoing''.

(B) CONFORMING AMENDMENT.—The heading of paragraph (1) of section 415(b) of such Code is amended by striking ''SPECIAL RULE FOR STATE AND'' and inserting ''SPECIAL RULE FOR STATE, INDIAN TRIBAL, AND''.

(3) GOVERNMENT PICK UP CONTRIBUTIONS.—Paragraph (2) of section 414(h) of such Code (relating to designation by units of government) is amended by striking ''State or political subdivision'' and inserting ''State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision''.

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 4021(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321(b)) is amended—

(1) in paragraph (12), by striking ''or'' at the end;

(2) in paragraph (13), by striking ''plan.'' and inserting ''plan; or''; and

(3) by adding at the end the following:

''(14) established and maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.''.

SEC. 1314. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to any year beginning before, on, or after the date of the enactment of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1321. TRANSFER OF EXCESS FUNDS FROM BLACK LUNG DISABILITY TRUSTS TO UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND.

(a) IN GENERAL.—So much of section 501(c)(21)(C) of the Internal Revenue Code of 1986 (relating to black lung disability trusts) as precedes the last sentence is amended to read as follows:

''(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 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.''

(b) TRANSFER.—Section 9705 of such Code (relating to transfer) is amended by adding at the end the following new subsection:

''(c) TRANSFER FROM BLACK LUNG DISABILITY TRUSTS.—

''(1) IN GENERAL.—The Secretary shall transfer each fiscal year to the Fund from the general fund of the Treasury an amount which the Secretary estimates to be the additional amounts received in the Treasury for that fiscal year by reason of the amendment made by section 1321(a) of the Pension Security and Transparency Act of 2005. The Secretary shall adjust the amount transferred for any year to the extent necessary to correct errors in any estimate for any prior year.

''(2) USE OF FUNDS.—Any amount transferred to the Combined Fund under paragraph (1) shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for any plan year beginning after December 31, 2002.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 1322. TREATMENT OF DEATH BENEFITS FROM CORPORATE-OWNED LIFE INSURANCE.

(a) IN GENERAL.—Section 101 of the Internal Revenue Code of 1986 (relating to certain death benefits) is amended by adding at the end the following new subsection:

''(j) TREATMENT OF CERTAIN EMPLOYER-OWNED LIFE INSURANCE CONTRACTS.—

''(1) GENERAL RULE.—In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.

''(2) EXCEPTIONS.—In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

''(A) EXCEPTIONS BASED ON INSURED'S STATUS.—Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

''(i) was an employee at any time during the 12-month period before the insured's death, or

''(ii) is, at the time the contract is issued—

''(I) a director,

''(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

''(III) a highly compensated individual within the meaning of section 105(h)(5), except that '35 percent' shall be substituted for '25 percent' in subparagraph (C) thereof.

''(B) EXCEPTION FOR AMOUNTS PAID TO INSURED'S HEIRS.—Any amount received by reason of the death of an insured to the extent—

''(i) the amount is paid to a member of the family (within the meaning of section 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

''(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

''(3) EMPLOYER-OWNED LIFE INSURANCE CONTRACT.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'employer-owned life insurance contract' means a life insurance contract which—

''(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

''(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

''(B) APPLICABLE POLICYHOLDER.—For purposes of this subsection—

''(i) IN GENERAL.—The term 'applicable policyholder' means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

''(ii) RELATED PERSONS.—The term 'applicable policyholder' includes any person which—

''(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

''(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

''(4) NOTICE AND CONSENT REQUIREMENTS.—The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

''(A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued,

''(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

''(C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

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

''(A) EMPLOYEE.—The term 'employee' includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

''(B) INSURED.—The term 'insured' means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.''.

(b) REPORTING REQUIREMENTS.—Subpart A of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6039H the following new section:

"SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO EMPLOYER-OWNED LIFE INSURANCE CONTRACTS.

''(a) IN GENERAL.—Every applicable policyholder owning 1 or more employer-owned life insurance contracts issued after the date of the enactment of this section shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) showing for each year such contracts are owned—

''(1) the number of employees of the applicable policyholder at the end of the year,

''(2) the number of such employees insured under such contracts at the end of the year,

''(3) the total amount of insurance in force at the end of the year under such contracts,

''(4) the name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged, and

''(5) that the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of insured employees for whom such consent was not obtained).

''(b) RECORDKEEPING REQUIREMENT.—Each applicable policyholder owning 1 or more employer-owned life insurance contracts during any year shall keep such records as may be necessary for purposes of determining whether the requirements of this section and section 101(j) are met.

''(c) DEFINITIONS.—Any term used in this section which is used in section 101(j) shall have the same meaning given such term by section 101(j).''.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 101(a) of the Internal Revenue Code of 1986 is amended by striking ''and subsection (f)'' and inserting ''subsection (f), and subsection (j)''.

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039H the following new item:

''Sec. 6039I. Returns and records with respect to employer-owned life insurance contracts.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to life insurance contracts issued after the date of the enactment of this Act, except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.

Subtitle D—Other Related Pension Provisions

PART I—HEALTH AND MEDICAL BENEFITS

SEC. 1331. USE OF EXCESS PENSION ASSETS FOR FUTURE RETIREE HEALTH BENEFITS.

(a) IN GENERAL.—Section 420 of the Internal Revenue Code of 1986 (relating to transfers of excess pension assets to retiree health accounts), as amended by this Act, is amended by adding at the end the following new subsection:

''(f) QUALIFIED TRANSFER TO COVER FUTURE RETIREE HEALTH COSTS.—

''(1) IN GENERAL.—An employer maintaining a defined benefit plan (other than a multiemployer plan) may elect for any taxable year to have the plan make a qualified future transfer rather than a qualified transfer for the taxable year. Except as provided in this subsection, a qualified future transfer shall be treated for purposes of this title and the Employee Retirement Income Security Act of 1974 as if it were a qualified transfer.

''(2) QUALIFIED FUTURE TRANSFER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified future transfer' means a transfer which meets all of the requirements for a qualified transfer, except that—

''(i) the determination of excess pension assets shall be made under subparagraph (B),

''(ii) the limitation on the amount transferred shall be made under subparagraph (C), and

''(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D).

''(B) EXCESS PENSION ASSETS.—

''(i) IN GENERAL.—In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting '115 percent' for '125 percent'.

''(ii) REQUIREMENT TO MAINTAIN FUNDED STATUS.—If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of clause (i)) exceeds the amount determined under subsection (e)(2)(A), either—

''(I) the employer maintaining the plan shall make contributions to the plan in an amount not less than the amount required to reduce such excess to zero as of such date, or

''(II) there is transferred from the health benefits account to the plan an amount not less than the amount required to reduce such excess to zero as of such date.

''(C) LIMITATION ON AMOUNT TRANSFERRED.—Notwithstanding subsection (b)(3), the amount of the excess pension assets which may be transferred in a qualified future transfer shall be equal to the sum of—

''(i) if the transfer period includes the taxable year of the transfer, the amount determined under subsection (b)(3) for such taxable year, plus

''(ii) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree health liabilities which the plan reasonably estimates, in accordance with guidance issued by the Secretary, will be incurred for each of such years.

''(D) MINIMUM COST REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of subsection (c)(3) shall be treated as met if each group health plan or arrangement under which applicable health benefits are provided provides applicable health benefits during the period beginning with the first year of the transfer period and ending with the last day of the 4th year following the transfer period such that the annual average amount of such benefits provided during such period is not less than the applicable employer cost determined under subsection (c)(3)(A) with respect to the transfer.

''(ii) ELECTION TO MAINTAIN BENEFITS.—An employer may elect, in lieu of the requirements of clause (i), to meet the requirements of subsection (c)(3) by meeting the requirements of such subsection (as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999) for each of the years described in the period under clause (i).

''(3) COORDINATION WITH OTHER TRANSFERS.—In applying subsection (b)(3) to any subsequent transfer during a taxable year in a transfer period, qualified current retiree health liabilities shall be reduced by any such liabilities taken into account with respect to the qualified future transfer to which such period relates.

''(4) TRANSFER PERIOD.—For purposes of this subsection, the term 'transfer period' means, with respect to any transfer, a period of consecutive taxable years specified in the election under paragraph (1) which begins and ends during the 10-taxable-year period beginning with the taxable year of the transfer.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 1332. SPECIAL RULES FOR FUNDING OF COLLECTIVELY BARGAINED RETIREE HEALTH BENEFITS.

(a) COLLECTIVELY BARGAINED TRANSFER TREATED AS A QUALIFIED TRANSFER.—

(1) IN GENERAL.—Section 420(b) of the Internal Revenue Code of 1986 (defining qualified transfer) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) A collectively bargained transfer (as defined in subsection (e)(5)) shall be treated as a qualified transfer.''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 420(b)(2) of such Code is amended by inserting ''or a collectively bargained transfer'' after ''paragraph (4)''.

(B) Paragraph (3) of section 420(b) of such Code is amended to read as follows:

''(3) LIMITATION ON AMOUNT TRANSFERRED.—

''(A) IN GENERAL.—The amount of excess pension assets which may be transferred in a qualified transfer (other than a collectively bargained transfer) shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.

''(B) EXCEPTION FOR COLLECTIVELY BARGAINED TRANSFERS.—The amount of excess pension assets which may be transferred in a collectively bargained transfer shall not exceed the amount which is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period for collectively bargained retiree health liabilities.''.

(b) REQUIREMENTS OF PLANS MAKING COLLECTIVELY BARGAINED TRANSFERS.—

(1) IN GENERAL.—Paragraph (1) of section 420(c) of the Internal Revenue Code of 1986 (relating to requirements of plan transferring assets) is amended to read as follows:

''(1) USE OF TRANSFERRED ASSETS.—

''(A) IN GENERAL.—Except in the case of a collectively bargained transfer, any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement).

''(B) COLLECTIVELY BARGAINED TRANSFER.—Any assets transferred to a health benefits account in a collectively bargained transfer (and any income allocable thereto) shall be used only to pay collectively bargained retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(6)(D)) for the taxable year of the transfer or for any subsequent taxable year during the collectively bargained cost maintenance period (whether directly or through reimbursement).

''(C) AMOUNTS NOT USED TO PAY FOR HEALTH BENEFITS.—

''(i) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) (in the case of a qualified transfer other than a collectively bargained transfer) or cannot be used as provided in subparagraph (B) (in the case of a collectively bargained transfer) shall be transferred out of the account to the transferor plan.

''(ii) TAX TREATMENT OF AMOUNTS.—Any amount transferred out of an account under clause (i)—

''(I) shall not be includible in the gross income of the employer, but

''(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

''(D) ORDERING RULE.—For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A) (in the case of a qualified transfer other than a collectively bargained transfer) or subparagraph (B) (in the case of a collectively bargained transfer).''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 420(c)(3) of such Code is amended to read as follows:

''(A) IN GENERAL.—The requirements of this paragraph are met if—

''(i) except as provided in clause (ii), each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer, and

''(ii) in the case of a collectively bargained transfer, each collectively bargained group health plan under which collectively bargained health benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period shall not be less than the amount specified by the collective bargaining agreement.''.

(B) Section 420(c)(3) of such Code is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) COLLECTIVELY BARGAINED EMPLOYER COST.—For purposes of this paragraph, the term 'collectively bargained employer cost' means the average cost per covered individual of providing collectively bargained retiree health benefits as determined in accordance with the applicable collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained retiree health benefits that is provided or financed by a government program or other source.''.

(C) Subparagraph (E) of section 420(c)(3) of such Code (as redesignated by subparagraph (B)) is amended to read as follows:

''(E) MAINTENANCE PERIOD.—For purposes of this paragraph—

''(i) COST MAINTENANCE PERIOD.—The term 'cost maintenance period' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A)(i) for such taxable year.

''(ii) COLLECTIVELY BARGAINED COST MAINTENANCE PERIOD.—The term 'collectively bargained cost maintenance period' means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

''(I) the remaining lifetime of such covered retiree and his covered spouse and dependents, or

''(II) the period of coverage provided by the collectively bargained health plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and his covered spouse and dependents.''.

(c) LIMITATIONS ON EMPLOYER.—Subsection (d) of section 420 of the Internal Revenue Code of 1986 is amended to read as follows:

''(d) LIMITATIONS ON EMPLOYER.—For purposes of this title—

''(1) DEDUCTION LIMITATIONS.—No deduction shall be allowed—

''(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(C)),

''(B) for qualified current retiree health liabilities or collectively bargained retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

''(C) except in the case of a collectively bargained transfer, for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

''(i) the amount determined under subparagraph (A) (and income allocable thereto), over

''(ii) the amount determined under subparagraph (B).

''(2) OTHER LIMITATIONS.—

''(A) NO CONTRIBUTIONS ALLOWED.—Except as provided in subparagraph (B), an employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1)(A).

''(B) EXCEPTION.—An employer may contribute an amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to collectively bargained retiree health liabilities for which transferred assets are required to be used under subsection (c)(1)(B), and the deductibility of any such contribution shall be governed by the limits applicable to the deductibility of contributions to a welfare benefit fund under a collective bargaining agreement (as determined under section 419A(f)(5)(A)) without regard to whether such contributions are made to a health benefits account or welfare benefit fund and without regard to the provisions of section 404 or the other provisions of this section. The Secretary shall provide rules to ensure that the application of this section does not result in a deduction being allowed more than once for the same contribution or for 2 or more contributions or expenditures relating to the same collectively bargained retiree health liabilities.''.

(d) DEFINITIONS.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definition and special rules) is amended by adding at the end the following new paragraphs:

''(5) COLLECTIVELY BARGAINED TRANSFER.—The term 'collectively bargained transfer' means a transfer—

''(A) of excess pension assets to a health benefits account which is part of such plan in a taxable year beginning after December 31, 2005, and

''(B) which does not contravene any other provision of law,

''(C) with respect to which are met in connection with the plan—

''(i) the use requirements of subsection (c)(1),

''(ii) the vesting requirements of subsection (c)(2), and

''(iii) the minimum cost requirements of subsection (c)(3),

''(D) which is made in accordance with a collective bargaining agreement,

''(E) which, before the transfer, the employer designates, in a written notice delivered to each employee organization that is a party to the collective bargaining agreement, as a collectively bargained transfer in accordance with this section, and

''(F) which involves—

''(i) a plan maintained by an employer which, in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and dependents under all of the benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(2)(E)(ii)(II)) for such taxable year,

''(ii) or a plan maintained by a successor to such employer.

Such term shall not include a transfer after December 31, 2013.

''(6) COLLECTIVELY BARGAINED RETIREE HEALTH LIABILITIES.—

''(A) IN GENERAL.—The term 'collectively bargained retiree health liabilities' means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits (including administrative expenses) for such taxable year and all subsequent taxable years during the collectively bargained cost maintenance period.

''(B) REDUCTION FOR AMOUNTS PREVIOUSLY SET ASIDE.—The amount determined under subparagraph (A) shall be reduced by the value (as of the close of the plan year preceding the year of the collectively bargained transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree health liabilities.

''(C) KEY EMPLOYEES EXCLUDED.—If an employee is a key employee (within the meaning of section 416(I)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree health liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

''(7) COLLECTIVELY BARGAINED HEALTH BENEFITS.—The term 'collectively bargained health benefits' means health benefits or coverage which are provided to—

''(A) retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

''(B) if specified by the provisions of the collective bargaining agreement governing the collectively bargained transfer, active employees who, following their retirement, are entitled to receive such benefits and who are entitled to pension benefits under the plan, and their spouses and dependents.

''(8) COLLECTIVELY BARGAINED HEALTH PLAN.—The term 'collectively bargained health plan' means a group health plan or arrangement for retired employees and their spouses and dependents that is maintained pursuant to 1 or more collective bargaining agreements.''.

(e) CONFORMING AMENDMENT.—The last sentence of section 401(h) of the Internal Revenue Code of 1986 is amended by inserting ''(other than contributions with respect to collectively bargained retiree health liabilities within the meaning of section 420(e)(6))'' after ''medical benefits''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2004.

SEC. 1333. ALLOWANCE OF RESERVE FOR MEDICAL BENEFITS OF PLANS SPONSORED BY BONA FIDE ASSOCIATIONS.

(a) IN GENERAL.—Section 419A(c) of the Internal Revenue Code of 1986 (relating to account limit) is amended by adding at the end the following new paragraph:

''(6) ADDITIONAL RESERVE FOR MEDICAL BENEFITS OF BONA FIDE ASSOCIATION PLANS.—

''(A) IN GENERAL.—An applicable account limit for any taxable year may include a reserve in an amount not to exceed 35 percent of the sum of—

''(i) the qualified direct costs, and

''(ii) the change in claims incurred but unpaid,

for such taxable year with respect to medical benefits (other than post-retirement medical benefits).

''(B) APPLICABLE ACCOUNT LIMIT.—For purposes of this subsection, the term 'applicable account limit' means an account limit for a qualified asset account with respect to medical benefits provided through a plan maintained by a bona fide association (as defined in section 2791(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3))''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2005.

PART II—CASH OR DEFERRED ARRANGEMENTS

SEC. 1336. TREATMENT OF ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—Section 414 of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new subsection:

''(x) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

''(1) GENERAL RULE.—Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan.

''(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible combined plan' means a plan—

''(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

''(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

''(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

''(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term 'small employer' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting '500' for '50' each place it appears.

''(B) BENEFIT REQUIREMENTS.—

''(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

''(I) 1 percent multiplied by the number of years of service with the employer, or

''(II) 20 percent.

''(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—If the defined benefit plan under clause (i) is a qualified cash balance plan (within the meaning of section 411(b)(5)), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

''If the participant's age as of the beginning of the year is—	**The percentage is—**
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

''(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

''(C) CONTRIBUTION REQUIREMENTS.—

''(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of eligible combined plan are met if—

''(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

''(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

''(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

''(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

''(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

''(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

''(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

''(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

''(E) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

''(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS.—The requirements of this clause are met if—

''(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l), and

''(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l).

''(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

''(3) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

''(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

''(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

''(4) SATISFACTION OF TOP-HEAVY RULES.—A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

''(5) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

''(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

''(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

''(ii) meets the notice requirements under subparagraph (B).

''(B) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

''(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

''(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

''(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

''(6) COORDINATION WITH OTHER REQUIREMENTS.—

''(A) TREATMENT OF SEPARATE PLANS.—Section 414(k) shall not apply to an eligible combined plan.

''(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

''(7) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable defined contribution plan' means a defined contribution plan which includes a qualified cash or deferred arrangement.

''(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term 'qualified cash or deferred arrangement' has the meaning given such term by section 401(k)(2).''.

(b) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 210 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

''(e) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

''(1) GENERAL RULE.—Except as provided in this subsection, this Act shall be applied to any defined benefit plan or applicable individual account plan which are part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan.

''(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible combined plan' means a plan—

''(i) which, at the time the plan is established, is maintained by a small employer,

''(ii) which consists of a defined benefit plan and an applicable individual account plan each of which qualifies under section 401(a) of the Internal Revenue Code of 1986,

''(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this Act under paragraph (1), and

''(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term 'small employer' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting '500' for '50' each place it appears.

''(B) BENEFIT REQUIREMENTS.—

''(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

''(I) 1 percent multiplied by the number of years of service with the employer, or

''(II) 20 percent.

''(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—If the defined benefit plan under clause (i) is a qualified cash balance plan (within the meaning of section 204(b)(5)), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

''If the participant's age as of the beginning of the year is—	**The percentage is—**
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

''(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (1), (2), and (3) of section 203(b), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

''(C) CONTRIBUTION REQUIREMENTS.—

''(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of eligible combined plan are met if—

''(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

''(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) of the Internal Revenue Code of 1986 shall apply for purposes of this clause.

''(ii) NONELECTIVE CONTRIBUTIONS.—An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

''(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

''(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

''(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

''(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

''(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 203 shall apply to the extent not inconsistent with this subparagraph.

''(E) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or applicable individual account plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

''(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS.—The requirements of this clause are met if—

''(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l) of the Internal Revenue Code of 1986, and

''(II) the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l) of the Internal Revenue Code of 1986.

''(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan.

''(3) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

''(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable individual account plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) of the Internal Revenue Code of 1986 if the requirements of subparagraph (C) are met with respect to such arrangement.

''(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) of such Code to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A) of such Code.

''(4) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

''(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

''(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

''(ii) meets the notice requirements under subparagraph (B).

''(B) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

''(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

''(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

''(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

''(5) COORDINATION WITH OTHER REQUIREMENTS.—

''(A) TREATMENT OF SEPARATE PLANS.—Section 414(k) of the Internal Revenue Code of 1986 shall not apply to an eligible combined plan.

''(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of section 103.

''(6) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable individual account plan' means an individual account plan which includes a qualified cash or deferred arrangement.

''(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term 'qualified cash or deferred arrangement' has the meaning given such term by section 401(k)(2) of the Internal Revenue Code of 1986.''.

(2) CONFORMING CHANGES.—

(A) The heading for section 210 of such Act is amended to read as follows:

''SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPECIAL RULES.''.

(B) The table of contents in section 1 of such Act is amended by striking the item relating to section 210 and inserting the following new item:

''Sec. 210. Multiple employer plans and other special rules''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2008.

SEC. 1337. STATE AND LOCAL GOVERNMENTS ELIGIBLE TO MAINTAIN SECTION 401(k) PLANS.

(a) IN GENERAL.—Clause (ii) of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (relating to governments ineligible) is amended to read as follows:

''(ii) GOVERNMENTS ELIGIBLE.—A State or local government or political subdivision thereof, or any agency or instrumentality thereof, may include a qualified cash or deferred arrangement as part of a plan maintained by it.''

(b) COORDINATION WITH SECTION 457 LIMITS.—Section 402(g) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(9) COORDINATION OF SECTION 457 LIMITS FOR STATE AND LOCAL GOVERNMENTAL PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of an individual who is a participant in 1 or more qualified cash or deferred arrangements maintained by a governmental entity described in section 401(k)(4)(B)(ii), the amount excludable from gross income under paragraph (1) with respect to the individual for any taxable year with respect to elective deferrals under such arrangements shall be reduced by the aggregate amounts deferred under section 457 with respect to the individual for the taxable year under 1 or more eligible deferred compensation plans (as defined in section 457(b)) maintained by an employer described in section 457(e)(1)(A).

''(B) SPECIAL RULE FOR PRE-1986 GRANDFATHERED PLANS.—Subparagraph (A) shall not apply to any qualified cash or deferred arrangement maintained by a governmental entity described in section 401(k)(4)(B)(ii) if the arrangement (or any predecessor) was adopted by the entity before May 6, 1986, or treated as so adopted under section 1116(f)(2)(B) of the Tax Reform Act of 1986.''

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

PART III—EXCESS CONTRIBUTIONS

SEC. 1339. EXCESS CONTRIBUTIONS.

(a) EXPANSION OF CORRECTIVE DISTRIBUTION PERIOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—Subsection (f) of section 4979 of the Internal Revenue Code of 1986 is amended—

(1) by and inserting ''6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))'' after ''2½ months'' in paragraph (1), and

(2) by striking ''2½ MONTHS OF'' in the heading and inserting ''SPECIFIED PERIOD AFTER''.

(b) YEAR OF INCLUSION.—Paragraph (2) of section 4979(f) of such Code is amended to read as follows:

''(2) YEAR OF INCLUSION.—Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient's taxable year in which such distributions were made.''.

(c) SIMPLIFICATION OF ALLOCABLE EARNINGS.—

(1) SECTION 4979.—Subsection (f) of section 4979 of such Code is amended—

(A) by adding ''through the end of the plan year for which the contribution was made'' after ''thereto'' in paragraph (1), and

(B) by adding ''through the end of the plan year for which the contributions were made'' after ''thereto'' in paragraph (2)(B).

(2) SECTION 401(k) AND 401(M).—

(A) Clause (i) of section 401(k)(8)(A) is amended by adding ''through the end of such year'' after ''such contributions''.

(B) Subparagraph (A) of section 401(m)(6) of such Code is amended by adding ''through the end of such year'' after ''to such contributions''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2005.

PART IV—OTHER PROVISIONS

SEC. 1341. AMENDMENTS RELATING TO PROHIBITED TRANSACTIONS.

(a) EXEMPTION FOR BLOCK TRADING.—

(1) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14) BLOCK TRADING.—

''(A) IN GENERAL.—Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary who has investment discretion or control with respect to the assets involved in the transaction or is providing investment advice as a fiduciary for purposes of this title to enter into the transaction) with respect to a plan if—

''(i) the transaction involves a block trade,

''(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent of the aggregate size of the block trade,

''(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

''(iv) compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party.

''(B) BLOCK TRADE.—For purposes of this paragraph, the term 'block trade' includes any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4975(d) of such Code is amended—

(i) by striking ''or'' at the end of paragraph (15),

(ii) by striking the period at the end of paragraph (16)(F) and inserting ''; or'', and

(iii) by adding at the end the following new paragraph:

''(17) any transaction involving the purchase or sale of securities between a plan and a disqualified person (other than a fiduciary who has investment discretion or control over the transaction or is providing investment advice as a fiduciary for purposes of title I of the Employee Retirement Income Security Act to enter into the transaction) with respect to a plan if—

''(A) the transaction involves a block trade,

''(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent of the aggregate size of the block trade,

''(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

''(D) compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party.''.

(B) Section 4975(e) of such Code is amended by adding at the end the following new paragraph:

''(11) BLOCK TRADE.—The term 'block trade' includes any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.''.

(b) BONDING RELIEF.—Section 412(a) of such Act (29 U.S.C. 1112(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3),

(2) by striking ''and'' at the end of paragraph (1), and

(3) by inserting after paragraph (1) the following new paragraph:

''(2) no bond shall be required of any entity which is registered as a broker or a dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) if the broker or dealer is subject to the fidelity bond requirements of a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)).''.

(c) EXEMPTION FOR FINANCIAL MARKETS TRADING SYSTEMS.—

(1) IN GENERAL.—Section 408(b) of such Act, as amended by subsection (b)(1), is amended by adding at the end the following new paragraph:

''(15) FINANCIAL MARKETS TRADING SYSTEMS.—Any transaction involving the purchase and sale of securities between a plan and a fiduciary or a party in interest if—

''(A) the transaction is executed through—

''(i) a national securities exchange or a trading system owned by a national securities association registered with the Securities and Exchange Commission, regardless of whether such fiduciary or party in interest (or any affiliate of either) has an interest in such exchange or trading system,

''(ii) an alternative trading system or electronic communication network subject to regulation and oversight by the Securities and Exchange Commission, regardless of whether such fiduciary or party in interest (or any affiliate of either) has an interest in such alternative trading system or electronic communications network, or

''(iii) any other trading system for securities or other property approved by the Secretary through regulatory or exemptive relief,

''(B) the price associated with the purchase and sale is at least as favorable as an arm's length transaction with an unrelated party,

''(C) the compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party,

''(D) in the event the fiduciary or party in interest directing the transaction (or any affiliate of either) has an ownership interest in the trading system (other than an exchange or trading system described in subparagraph (A)(i)), the execution of transactions on such system is annually authorized by a plan fiduciary,

''(E) the transaction is executed in accordance with the nondiscretionary rules and procedures adopted by such trading system to match offsetting orders, and

''(F) in the event the transaction is not executed on an exchange or trading system described in subparagraph (A)(i)—

''(i) neither the trading system nor the parties to the transaction take into account the identity of the parties in the execution of trades, and the parties to the transaction do not actually know the identity of the other at the time that the terms and price of the transaction are agreed to, or

''(ii) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the trading system.''.

(2) CONFORMING AMENDMENT.—Section 4975(d) of such Code (as amended by subsection (b)(2)) is amended—

(A) by striking ''or'' at the end of paragraph (16),

(B) by striking the period at the end of paragraph (17)(E) and inserting ''; or'', and

(C) by adding at the end the following new paragraph:

''(18) any transaction involving the purchase and sale of securities or other property between a plan and a fiduciary or a disqualified person if—

''(A) the transaction is executed through—

''(i) a national securities exchange or a trading system owned by a national securities association registered with the Securities and Exchange Commission, regardless of whether such fiduciary or disqualified person (or any affiliate of either) has an interest in such exchange or trading system,

''(ii) an alternative trading system or electronic communication network subject to regulation and oversight by the Securities and Exchange Commission, regardless of whether such fiduciary or disqualified person (or any affiliate of either) has an interest in such alternative trading system or electronic communications network, or

''(iii) any other trading system for securities or other property approved by the Secretary through regulatory or exemptive relief,

''(B) the price associated with the purchase and sale is at least as favorable as an arm's length transaction with an unrelated party,

''(C) the compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party,

''(D) in the event the fiduciary or disqualified person directing the transaction (or any affiliate of either) has an ownership interest in the trading system (other than an exchange or trading system described in subparagraph (A)(i)), the execution of transactions on such system is annually authorized by a plan fiduciary,

''(E) the transaction is executed in accordance with the nondiscretionary rules and procedures adopted by such trading system to match offsetting orders, and

''(F) in the event the transaction is not executed on an exchange or trading system described in subparagraph (A)(i)—

''(i) neither the trading system nor the parties to the transaction take into account the identity of the parties in the execution of trades, and the parties to the transaction do not actually know the identity of the other at the time that the terms and price of the transaction are agreed to, or

''(ii) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the trading system.''.

(d) RELIEF FOR FOREIGN EXCHANGE TRANSACTIONS.—

(1) IN GENERAL.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by subsection (c)(1), is amended by adding at the end the following new paragraph:

''(16) Any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either), and a plan or an individual retirement account (within the meaning of section 408 of the Internal Revenue Code of 1986) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other party in interest, if—

''(A) the transaction is in connection with the purchase, holding, or sale of securities,

''(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

''(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more or less than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

''(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.''.

(2) CONFORMING AMENDMENT.—Section 4975(d) of such Code, as amended by subsection (c)(2), is amended—

(A) by striking ''or'' at the end of paragraph (17)(E),

(B) by striking the period at the end of paragraph (18)(F)(ii) and inserting ''; or'', and

(C) by adding at the end the following new paragraph:

''(19) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan or an individual retirement account (within the meaning of section 408) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or disqualified person, if—

''(A) the transaction is in connection with the purchase, holding, or sale of securities,

''(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

''(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more or less than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

''(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.''.

(e) CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.—

(1) IN GENERAL.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by subsection (d)(1), is amended by adding at the end the following new paragraph:

''(17) CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

''(B) EXCEPTION FOR EMPLOYER SECURITIES AND REAL PROPERTY.—Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

''(C) EXCEPTION FOR KNOWING VIOLATIONS.—In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any prohibited transaction if, at the time such transaction occurs, such fiduciary or party in interest (or other person) knew that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

''(D) CORRECTION PERIOD.—For purposes of this paragraph, the term 'correction period' means the 14-day period beginning on the date on which such transaction occurs.

''(E) OTHER DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof),

''(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof), and

''(iii) the terms 'correction' and 'correct' mean, with respect to a transaction, undoing the transaction to the extent possible, but in any case, making good to the plan or affected account any losses resulting from the transaction and restoring to the plan or affected account any profits made through use of the plan.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4975(d) of such Code, as amended by subsection (d)(2), is amended—

(i) by striking ''or'' at the end of paragraph (18)(F)(2),

(ii) by striking the period at the end of paragraph (19)(D) and inserting ''; or'', and

(iii) by adding at the end the following new paragraph:

''(20) except as provided in subparagraph (B) or (C) of subsection (f)(8), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.''.

(B) Section 4975(f) of such Code is amended by adding at the end the following new paragraph:

''(8) CORRECTION PERIOD.—

''(A) IN GENERAL.—For purposes of subsection (d)(20), the term 'correction period' means the 14-day period beginning on the date on which such transaction occurs.

''(B) EXCEPTION FOR EMPLOYER SECURITIES AND REAL PROPERTY.—Subsection (d)(20) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) of the Employee Retirement Income Security Act) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

''(C) EXCEPTION FOR KNOWING VIOLATIONS.—In the case of any fiduciary or other disqualified person (or any other person knowingly participating in such transaction), subsection (d)(20) does not apply to any prohibited transaction if, at the time such transaction occurs, such fiduciary or disqualified person (or other person) knew that the transaction would (without regard to subsection (d)(20) or this paragraph) constitute a violation of subparagraph (A), (B), (C), or (D) of subsection (c)(1).

''(D) ABATEMENT OF TAX WHERE THERE IS A CORRECTION.—If a transaction is not treated as a prohibited transaction by reason of subsection (d)(20), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and, if assessed, the assessment shall be abated, and, if collected, shall be credited or refunded as an overpayment.

''(E) OTHER DEFINITIONS.—For purposes of this paragraph and subsection (d)(20)—

''(i) the term 'security' has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof),

''(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof), and

''(iii) the terms 'correction' and 'correct' mean, with respect to a transaction, undoing the transaction to the extent possible, but in any case, making good to the plan or affected account any losses resulting from the transaction and restoring to the plan or affected account any profits made through use of the plan.''.

(C) Section 4975(f)(5) of such Code is amended by striking ''The terms'' and inserting ''Except as provided in paragraph (8)(E)(iii), the terms''.

(f) CROSS TRADES STUDY.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Labor, in consultation with the President's Working Group on Financial Markets, shall report to the President and Congress the results of a study on the implications for pension plans, plan sponsors, plan fiduciaries, and plan participants of a prohibited transaction exemption for active cross trades and the impact that such a prohibited transaction exemption could have on the safety and security of pension plan assets. The study shall review and include recommendations regarding—

(1) the regulation and practice of passive and active cross trades in United States securities markets,

(2) the potential benefits and drawbacks of permitting active cross trades for retirement funds, and

(3) the ease or difficulty in policing cross trading activities for plan sponsors, plan fiduciaries, and any Federal agency charged with safeguarding the Nation's retirement funds.

(g) GAO STUDY.—The Comptroller General of the United States shall prepare a preliminary report not later than 2 years after the date of the enactment of this Act and a final report not later than 3 years after such date regarding the effects of the amendments made by this section, focusing on the effect of electronic communication networks and block trading on plan investments and on the oversight and enforcement activities of the Department of Labor to protect the rights of plan participants and beneficiaries. The Comptroller General of the United States shall submit the reports required under the preceding sentence to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and the Workforce of the House of Representatives.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction after the date of the enactment of this Act.

SEC. 1342. FEDERAL TASK FORCE ON OLDER WORKERS.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Secretary of Labor shall establish a Federal Task Force on Older Workers (referred to in this section as the ''Task Force'').

(b) MEMBERSHIP.—The Task Force established pursuant to subsection (a) shall be composed of representatives from all relevant Federal agencies that have regulatory jurisdiction over, or a clear policy interest in, pension issues relating to older workers, including the Internal Revenue Service and the Equal Employment Opportunity Commission.

(c) ACTIVITIES.—

(1) IN GENERAL.—Not later than 1 year after the date of establishment of the Task Force, the Task Force shall—

(A) identify statutory and regulatory provisions in current pension law that are disincentives to work and develop legislative and regulatory proposals to address such disincentives; and

(B) identify best pension practices in the private sector for hiring and retaining older workers, and serve as a clearinghouse of such information.

(2) REPORT.—Not later than 1 year after the date of establishment of the Task Force, the Task Force shall submit a report to Congress on the activities of the Task Force pursuant to paragraph (1). Such report shall be made available to the public.

(d) CONSULTATION.—In carrying out activities pursuant to this section, the Task Force shall consult with senior, business, labor, and other interested organizations.

(e) APPLICABILITY OF FACA; TERMINATION OF TASK FORCE.—

(1) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Task Force established pursuant to this section.

(2) TERMINATION.—The Task Force shall terminate 30 days after the date the Task Force completes all of its duties under this section.

SEC. 1343. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking ''2001 and 2005 on or after September 1 of each year involved'' and inserting ''2006 and 2010'';

(2) in subsection (b), by adding at the end the following new sentence: ''To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with any appropriate, qualified entity.'';

(3) in subsection (e)(2)—

(A) by striking ''Committee on Labor and Human Resources'' in subparagraph (D) and inserting ''Committee on Health, Education, Labor, and Pensions'';

(B) by striking subparagraph (F) and inserting the following:

''(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;'';

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

''(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

''(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

''(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and'';

(4) in subsection (e)(3)(B), by striking ''January 31, 1998'' and inserting ''3 months before the convening of each summit;'';

(5) in subsection (f)(1)(C), by inserting '', no later than 90 days prior to the date of the commencement of the National Summit,'' after ''comment'';

(6) in subsection (g), by inserting '', in consultation with the congressional leaders specified in subsection (e)(2),'' after ''report'' the first place it appears in the text;

(7) in subsection (i)—

(A) by striking ''for fiscal years beginning on or after October 1, 1997,''; and

(B) by adding at the end the following new paragraph:

''(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.''; and

(8) in subsection (k)—

(A) by striking ''shall enter into a contract on a sole-source basis'' and inserting ''may enter into a contract on a sole-source basis''; and

(B) by striking ''in fiscal year 1998''.

SA 2582. Mr. ISAKSON (for himself, Mr. NELSON of Florida, Mr. LOTT, Mr. COLEMAN, Mr. ROCKEFELLER, Mr. DEWINE, Mr. ALEXANDER, Mr. BENNETT, Mr. BURNS, Mr. HATCH, Mr. CHAMBLISS, Mr. CARPER, and Mr. SALAZAR) proposed an amendment to the bill S. 1783, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes; as follows:

Strike section 403 and insert the following:

SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.

(a) IN GENERAL.—If an election is made to have this section apply to an eligible plan—

(1) in the case of any applicable plan year beginning before January 1, 2007, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (d) for the plan for the plan year, and

(2) in the case of any applicable plan year beginning on or after January 1, 2007, the minimum required contribution determined under sections 303 of such Act and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (d) for the plan for the plan year.

(b) ELIGIBLE PLAN.—For purposes of this section—

(1) IN GENERAL.—The term ''eligible plan'' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act and 412 of such Code applies—

(A) which is sponsored by an employer—

(i) which is a commercial airline passenger airline, or

(ii) the principal business of which is providing catering services to a commercial passenger airline, and

(B) with respect to which the requirements of paragraphs (2) and (3) are met.

(2) ACCRUAL RESTRICTIONS.—

(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act, of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

(B) INCREASES IN SECTION 415 LIMITS DISREGARDED.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this paragraph unless, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term ''applicable benefit increase'' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan.

(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) if the participant—

(A) was receiving disability benefits as of such date, or

(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

(c) ELECTIONS AND RELATED TERMS.—

(1) IN GENERAL.—A plan sponsor shall make the election under subsection (a) at such time and in such manner as the Secretary of the Treasury may prescribe. Except as provided in subsection (h)(5), such election, once made, may be revoked only with the consent of such Secretary.

(2) YEARS FOR WHICH ELECTION MADE.—

(A) IN GENERAL.—The plan sponsor may select the first plan year to which the election under subsection (a) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

(B) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under subsection (a) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

(3) APPLICABLE PLAN YEAR.—The term ''applicable plan year'' means each plan year to which the election under subsection (a) applies under paragraph (1).

(d) MINIMUM REQUIRED CONTRIBUTION.—

(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance as of the first day of the first of such years under section 303(f) of such Act and section 430(f) of such Code shall be zero.

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

(A) UNFUNDED LIABILITY.—The term ''unfunded liability'' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) AMORTIZATION PERIOD.—The term ''amortization period'' means the 20-plan year period beginning with the first applicable plan year.

(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section, shall apply,

(B) the rate of interest under section 302(b) of such Act and section 412(b) of such Code, as so in effect, shall be used for all calculations requiring an interest rate, and

(C) the value of plan assets shall be equal to their fair market value.

(5) SPECIAL RULE FOR CERTAIN PLAN SPIN-OFFS.—For purposes of subsection (a), if, with respect to any eligible plan to which this subsection applies—

(A) any applicable plan year includes the date of the enactment of this Act,

(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under subsection (a)(1) for the eligible plan for such applicable plan year shall be determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of the minimum required contribution between such plans for the applicable plan year and direct the appropriate reallocation between the plans of any contributions for the applicable plan year.

(e) FUNDING STANDARD ACCOUNT AND PREFUNDING BALANCE.—Any charge or credit in the funding standard account under section 302 of such Act or section 412 of such Code, and any prefunding balance under section 303 of such Act or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

(f) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a)(36) of the Internal Revenue Code of 1986, as added by section 402 of this Act, is amended by adding at the end the following: ''This paragraph shall also apply to any plan during any period during which an amortization schedule under section 403 of the Pension Security and Transparency Act of 2005 is in effect.''

(2) PBGC LIABILITY LIMITED.—Section 4022 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following new subsection:

''(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN FUNDING REQUIREMENTS.—During any period in which an election by a plan under section 403 of the Pension Security and Transparency Act of 2005 is in effect, then this section and section 4044(a)(3) shall be applied by treating the first day of the first applicable plan year as the termination date of the plan. This subsection shall not apply to any plan for which an election under section 403(h) of such Act is in effect.''.

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iii) of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following new sentence: ''This clause shall also apply to any plan for a plan year if an election under section 403 of the Pension Security and Transparency Act of 2005 is in effect for such year.''

(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE PLANS.—During any period an election is in effect under this section with respect to an eligible plan, the Pension Benefit Guaranty Corporation shall, before it seeks or approves a termination of such plan under section 4041(c) or 4042 of the Employee Retirement Income Security Act of 1974—

(1) make a determination under section 4041(c)(4) or 4042(i) of such Act whether the termination would be necessary if the Secretary of the Treasury were to enter into an agreement under section 4047(a) of such Act which provides an alternative funding agreement to replace the amortization schedule under this section, and

(2) if the Corporation determines such an agreement would make such termination unnecessary, take all necessary actions to ensure the agreement is entered into.

The Pension Benefit Guaranty Corporation shall make the determination under paragraph (1) within 90 days of receiving all information needed in connection with a request for a termination (or if no such request is made, within 90 days of consideration of the termination by the Corporation).

(h) CERTAIN BENEFIT ACCRUALS AND INCREASES ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO COVER COSTS.—

(1) IN GENERAL.—If an employer elects the application of this subsection—

(A) the requirements of paragraphs (2) and (3) of subsection (b) shall not apply with respect to any eligible plan maintained by the employer and specified in the election, and

(B) the minimum required contribution under subsection (d) for any plan year with respect to the plan shall be increased by the amounts described in paragraphs (2) and (3).

Any liabilities and assets taken into account under this subsection shall not be taken into account in determining the unfunded liability of the plan for purposes of subsection (d).

(2) CURRENT FUNDING OF ACCRUALS AND INCREASES.—The amount determined under this paragraph for any plan year is the target normal cost which would occur under section 303(b) of such Act and 430(b) of such Code if—

(A) any benefit accrual, or benefit increase taking effect, during the plan year by reason of this subsection were treated as having been accrued or earned during the plan year, and

(B) the plan were treated as if it were in at-risk status.

(3) FUNDING MUST BE MAINTAINED.—The amount determined under this paragraph for any plan year is the amount of any increase in the shortfall amortization charge which would occur under section 303(c) of such Act and 430(c) of such Code if—

(A) the funding target were determined by only taking into account benefits to which paragraph (2) applied for preceding plan years,

(B) the only assets taken into account were the contributions required under this paragraph and paragraph (2) for preceding plan years (and any earnings thereon),

(C) the amortization period included only the plan year,

(D) the transition rule under section 303(c)(4)(B) of such Act and section 430(c)(4)(B) of such Code did not apply, and

(E) the plan were treated as if it were in at-risk status.

(4) SPECIAL RULES FOR YEARS BEFORE 2007.—Notwithstanding any other provision of this Act, in the case of an applicable plan year of an eligible plan to which this subsection applies which begins before January 1, 2007, in determining the amounts described in paragraphs (2) and (3) for such plan year—

(A) the provisions of, and amendments made by, sections 101, 102, 111, and 112 shall apply to such plan year, except that

(B) the interest rate used under section 303 of such Act and section 430 of such Code for purposes of applying paragraphs (2) and (3) to such plan year shall be the interest rate determined under section 302(b)(5) of such Act and section 412(b)(5) of such Code, as in effect for plan years beginning in 2005.

(5) ELECTION OUT OF SECTION.—An employer maintaining an eligible plan to which this subsection applies may make a one-time election with respect to any applicable plan year not to have this section apply to such plan year and all subsequent plan years. Subject to subsection (d)(2), the minimum required contribution under section 303 of such Act and 430 of such Code for all such plan years shall be determined without regard to this section.

(i) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—Section 410(b)(3) of such Code is amended by striking the last sentence and inserting the following: ''For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).''

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning before, on, or after the date of the enactment of this Act.

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

SA 2583. Mr. AKAKA (for himself, Mr. SPECTER, Mr. DURBIN, Mr. SALAZAR, Mr. INOUYE, and Mrs. FEINSTEIN) proposed an amendment to the bill S. 1783, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes; as follows:

At the end of title IV, add the following:

SEC. 4___. AGE REQUIREMENT FOR EMPLOYERS.

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)) is amended in the flush matter following paragraph (3), by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, paragraph (3) shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(b) MULTIEMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022B(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322b(a)) is amended by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, this subsection shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable on or after the date of enactment of this Act.

SA 2584. Mr. ISAKSON (for Mr. CRAIG) proposed an amendment to the bill S. 1234, to increase, effective as of December 1, 2005, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the '' Veterans' Compensation Cost-of-Living Adjustment Act of 2005''.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) VETERANS' DISABILITY COMPENSATION.—Section 1114 of title 38, United States Code, is amended—

(1) in subsection (a), by striking ''$106'' and inserting ''$112'';

(2) in subsection (b), by striking ''$205'' and inserting ''$218'';

(3) in subsection (c), by striking ''$316'' and inserting ''$337'';

(4) in subsection (d), by striking ''$454'' and inserting ''$485'';

(5) in subsection (e), by striking ''$646'' and inserting ''$690'';

(6) in subsection (f), by striking ''$817'' and inserting ''$873'';

(7) in subsection (g), by striking ''$1,029'' and inserting ''$1,099'';

(8) in subsection (h), by striking ''$1,195'' and inserting ''$1,277'';

(9) in subsection (i), by striking ''$1,344'' and inserting ''$1,436'';

(10) in subsection (j), by striking ''$2,239'' and inserting ''$2,393'';

(11) in subsection (k)—

(A) by striking ''$82'' both places it appears and inserting ''$87''; and

(B) by striking ''$2,785'' and ''$3,907'' and inserting ''$2,977'' and ''$4,176'', respectively;

(12) in subsection (l), by striking ''$2,785'' and inserting ''$2,977'';

(13) in subsection (m), by striking ''$3,073'' and inserting ''$3,284'';

(14) in subsection (n), by striking ''$3,496'' and inserting ''$3,737'';

(15) in subsections (o) and (p), by striking ''$3,907'' each place it appears and inserting ''$4,176'';

(16) in subsection (r), by striking ''$1,677'' and ''$2,497'' and inserting ''$1,792'' and ''$2,669'', respectively; and

(17) in subsection (s), by striking ''$2,506'' and inserting ''$2,678''.

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) of such title is amended—

(1) in subparagraph (A), by striking ''$127'' and inserting ''$135'';

(2) in subparagraph (B), by striking ''$219'' and ''$65'' and inserting ''$233'' and ''$68'', respectively;

(3) in subparagraph (C), by striking ''$86'' and ''$65'' and inserting ''$91'' and ''$68'', respectively;

(4) in subparagraph (D), by striking ''$103'' and inserting ''$109'';

(5) in subparagraph (E), by striking ''$241'' and inserting ''$257''; and

(6) in subparagraph (F), by striking ''$202'' and inserting ''$215''.

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 of such title is amended by striking ''$600'' and inserting ''$641''.

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—

(1) NEW LAW DIC.—Section 1311(a) of such title is amended—

(A) in paragraph (1), by striking ''$967'' and inserting ''$1,033''; and

(B) in paragraph (2), by striking ''$208'' and inserting ''$221''.

(2) OLD LAW DIC.—The table in paragraph (3) of such section is amended to read as follows:

''Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$1,033	W–4	$1,236
E–2	$1,033	O–1	$1,092
E–3	$1,033	O–2	$1,128
E–4	$1,033	O–3	$1,207
E–5	$1,033	O–4	$1,277
E–6	$1,033	O–5	$1,406
E–7	$1,069	O–6	$1,585
E–8	$1,128	O–7	$1,712
E–9	$1,177[1]	O–8	$1,879
W–1	$1,092	O–9	$2,010
W–2	$1,135	O–10	$2,204[2]
W–3	$1,169		

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,271.

[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,365.''.

(3) ADDITIONAL DIC FOR CHILDREN OR DISABILITY.—Section 1311 of such title is amended—

(A) in subsection (b), by striking ''$241'' and inserting ''$257'';

(B) in subsection (c), by striking ''$241'' and inserting ''$257''; and

(C) in subsection (d), by striking ''$115'' and inserting ''$122''.

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—

(1) DIC WHEN NO SURVIVING SPOUSE.—Section 1313(a) of such title is amended—

(A) in paragraph (1), by striking ''$410'' and inserting ''$438'';

(B) in paragraph (2), by striking ''$590'' and inserting ''$629'';

(C) in paragraph (3), by striking ''$767'' and inserting ''$819''; and

(D) in paragraph (4), by striking ''$767'' and ''$148'' and inserting ''$819'' and ''$157'', respectively.

(2) SUPPLEMENTAL DIC FOR CERTAIN CHILDREN.—Section 1314 of such title is amended—

(A) in subsection (a), by striking ''$241'' and inserting ''$257'';

(B) in subsection (b), by striking ''$410'' and inserting ''$438''; and

(C) in subsection (c), by striking ''$205'' and inserting ''$218''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 1, 2005.

(g) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SA 2585. Mr. ISAKSON (for Mr. DODD (for himself and Mr. MCCONNELL)) proposed an amendment to the concurrent resolution S. Con. Res. 62, directing the Joint Committee on the Library to procure a statue of Rosa Parks for placement in the Capitol; as follows:

On page 1, line 7, at the end add the following:

''The Joint Committee on the Library shall consider all locations in the Capitol, including Statuary Hall, the Rotunda, and the Capitol Visitor Center.''

SA 2586. Mr. SMITH (for himself, Mrs. LINCOLN, Mr. PRYOR, Mr. BUNNING, Mr. BURR, Mr. CHAMBLISS, Mrs. DOLE, Mrs. MURRAY, and Ms. CANTWELL) submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

SEC. ___. DEDUCTION FOR QUALIFIED TIMBER GAIN.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 is amended by adding at the end the following new section:

''SEC. 1203. DEDUCTION FOR QUALIFIED TIMBER GAIN.

''(a) IN GENERAL.—In the case of a taxpayer which elects the application of this section for a taxable year, there shall be allowed a deduction against gross income equal to 60 percent of the lesser of—

''(1) the taxpayer's qualified timber gain for such year, or

''(2) the taxpayer's net capital gain for such year.

''(b) QUALIFIED TIMBER GAIN.—For purposes of this section, the term 'qualified timber gain' means, with respect to any taxpayer for any taxable year, the excess (if any) of—

''(1) the sum of the taxpayer's gains described in subsections (a) and (b) of section 631 for such year, over

''(2) the sum of the taxpayer's losses described in such subsections for such year.

''(c) SPECIAL RULES FOR PASS-THRU ENTITIES.—In the case of any qualified timber gain of a pass-thru entity (as defined in section 1(h)(10)), the election under this section shall be made separately by each taxpayer subject to tax on such gain.''.

(b) COORDINATION WITH MAXIMUM CAPITAL GAINS RATES.—

(1) TAXPAYERS OTHER THAN CORPORATIONS.—Paragraph (2) of section 1(h) is amended to read as follows:

''(2) REDUCTION OF NET CAPITAL GAIN.—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the sum of—

''(A) the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii), and

''(B) the lesser of—

''(i) the amount described in paragraph (1) of section 1203(a), or

''(ii) the amount described in paragraph (2) of such section.''.

(2) CORPORATIONS.—Section 1201 is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection:

''(b) QUALIFIED TIMBER GAIN NOT TAKEN INTO ACCOUNT.—For purposes of this section, in the case of a corporation with respect to which an election is in effect under section 1203, the net capital gain for any taxable year shall be reduced (but not below zero) by the corporation's qualified timber gain (as defined in section 1203(b)).''.

(c) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting before the last sentence the following new paragraph:

''(21) QUALIFIED TIMBER GAINS.—The deduction allowed by section 1203.''.

(d) DEDUCTION ALLOWED IN COMPUTING ADJUSTED CURRENT EARNINGS.—Subparagraph (C) of section 56(g)(4) is amended by adding at the end the following new clause:

''(vii) DEDUCTION FOR QUALIFIED TIMBER GAIN.—Clause (i) shall not apply to any deduction allowed under section 1203.''.

(e) DEDUCTION ALLOWED IN COMPUTING TAXABLE INCOME OF ELECTING SMALL BUSINESS TRUSTS.—Subparagraph (C) of section 641(c)(2) is amended by inserting after clause (iii) the following new clause:

''(iv) The deduction allowed under section 1203.''.

(f) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 172(d)(2) is amended to read as follows:

''(B) the exclusion under section 1202 and the deduction under section 1203 shall not be allowed.''.

(2) Paragraph (4) of section 642(c) is amended by striking the first sentence and inserting the following: ''To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a) or qualified timber gain (as defined in section 1203(b)), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202 and for any deduction allowable to the estate or trust under section 1203.''

(3) Paragraph (3) of section 643(a) is amended by striking the last sentence and inserting the following: ''The exclusion under section 1202 and the deduction under section 1203 shall not be taken into account.''

(4) Subparagraph (C) of section 643(a)(6) is amended to read as follows:

''(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust—

''(i) there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges, and

''(ii) the deduction under section 1203 shall not be taken into account.''.

(5) Paragraph (4) of section 691(c) is amended by inserting ''1203,'' after ''1202,''.

(6) Paragraph (2) of section 871(a) is amended by inserting ''and 1203'' after ''section 1202''.

(7) The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end the following new item:

''Sec. 1203. Deduction for qualified timber gain.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after December 31, 2005, and before January 1, 2007.

(2) TAXABLE YEARS WHICH INCLUDE DATE OF ENACTMENT.—In the case of any taxable year which includes the date of the enactment of this Act, for purposes of the Internal Revenue Code of 1986, the taxpayer's qualified timber gain shall not exceed the excess that would be described in section 1203(b) of such Code, as added by this section, if only dispositions of timber after such date were taken into account.

SA 2587. Mr. DORGAN (for himself, Mr. DODD, Mrs. BOXER, Mr. REED, Mr. LIEBERMAN, and Mr. KOHL) proposed an amendment to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; as follows:

At the end of title IV, add the following:

SEC. ____. WINDFALL PROFITS TAX; ENERGY CONSUMER REBATE.

(a) WINDFALL PROFITS TAX.—

(1) IN GENERAL.—Subtitle E (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 56—WINDFALL PROFITS ON CRUDE OIL

"Sec. 5896. Imposition of tax.
"Sec. 5897. Windfall profit; removal price; adjusted base price; qualified investment.
"Sec. 5898. Special rules and definitions.

"SEC. 5896. IMPOSITION OF TAX.

"(a) IN GENERAL.—In addition to any other tax imposed under this title, there is hereby imposed on any integrated oil company (as defined in section 291(b)(4)) an excise tax equal to the excess of—

"(1) the amount equal to 50 percent of the windfall profit from all barrels of taxable crude oil removed from the property during each taxable year, over

"(2) the amount of qualified investment by such company during such taxable year.

"(b) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by subsection (a) shall be the same fraction of the amount of such tax imposed on the whole barrel.

"(c) TAX PAID BY PRODUCER.—The tax imposed by this section shall be paid by the producer of the taxable crude oil.

"SEC. 5897. WINDFALL PROFIT; REMOVAL PRICE; ADJUSTED BASE PRICE; QUALIFIED INVESTMENT.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'windfall profit' means the excess of the removal price of the barrel of taxable crude oil over the adjusted base price of such barrel.

"(b) REMOVAL PRICE.—For purposes of this chapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'removal price' means the amount for which the barrel of taxable crude oil is sold.

"(2) SALES BETWEEN RELATED PERSONS.—In the case of a sale between related persons, the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613.

"(3) OIL REMOVED FROM PROPERTY BEFORE SALE.—If crude oil is removed from the property before it is sold, the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

"(4) REFINING BEGUN ON PROPERTY.—If the manufacture or conversion of crude oil into refined products begins before such oil is removed from the property—

"(A) such oil shall be treated as removed on the day such manufacture or conversion begins, and

"(B) the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

"(5) PROPERTY.—The term 'property' has the meaning given such term by section 614.

"(c) ADJUSTED BASE PRICE DEFINED.—

"(1) IN GENERAL.—For purposes of this chapter, the term 'adjusted base price' means $40 for each barrel of taxable crude oil plus an amount equal to—

"(A) such base price, multiplied by

"(B) the inflation adjustment for the calendar year in which the taxable crude oil is removed from the property.

The amount determined under the preceding sentence shall be rounded to the nearest cent.

"(2) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the inflation adjustment for any calendar year after 2006 is the percentage by which—

"(i) the implicit price deflator for the gross national product for the preceding calendar year, exceeds

"(ii) such deflator for the calendar year ending December 31, 2005.

"(B) FIRST REVISION OF PRICE DEFLATOR USED.—For purposes of subparagraph (A), the first revision of the price deflator shall be used.

"(d) QUALIFIED INVESTMENT.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'qualified investment' means any amount paid or incurred with respect to—

"(A) section 263(c) costs,

"(B) qualified refinery property (as defined in section 179C(c) and determined without regard to any termination date),

"(C) any qualified facility described in paragraph (1), (2), (3), or (4) of section 45(d) (determined without regard to any placed in service date),

"(D) any facility for the production of alcohol used as a fuel (within the meaning of section 40) or biodiesel or agri-biodiesel used as a fuel (within the meaning of section 40A).

"(2) SECTION 263(c) COSTS.—For purposes of this subsection, the term 'section 263(c) costs' means intangible drilling and development costs incurred by the taxpayer which (by reason of an election under section 263(c)) may be deducted as expenses for purposes of this title (other than this paragraph). Such term shall not include costs incurred in drilling a nonproductive well.

"SEC. 5898. SPECIAL RULES AND DEFINITIONS .

"(a) WITHHOLDING AND DEPOSIT OF TAX.—The Secretary shall provide such rules as are necessary for the withholding and deposit of the tax imposed under section 5896 on any taxable crude oil.

"(b) RECORDS AND INFORMATION.—Each taxpayer liable for tax under section 5896 shall keep such records, make such returns, and furnish such information (to the Secretary and to other persons having an interest in the taxable crude oil) with respect to such oil as the Secretary may by regulations prescribe.

"(c) RETURN OF WINDFALL PROFIT TAX.—The Secretary shall provide for the filing and the time of such filing of the return of the tax imposed under section 5896.

"(d) DEFINITIONS.—For purposes of this chapter—

"(1) PRODUCER.—The term 'producer' means the holder of the economic interest with respect to the crude oil.

"(2) CRUDE OIL.—

"(A) IN GENERAL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(B) EXCLUSION OF NEWLY DISCOVERED OIL.—Such term shall not include any oil produced from a well drilled after the date of the enactment of the Windfall Profits Rebate Act of 2005, except with respect to any oil produced from a well drilled after such date on any proven oil or gas property (within the meaning of section 613A(c)(9)(A)).

"(3) BARREL.—The term 'barrel' means 42 United States gallons.

"(e) ADJUSTMENT OF REMOVAL PRICE.—In determining the removal price of oil from a property in the case of any transaction, the Secretary may adjust the removal price to reflect clearly the fair market value of oil removed.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter.

"(g) TERMINATION.—This section shall not apply to taxable crude oil removed after the date which is 3 years after the date of the enactment of this section.".

(2) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

"CHAPTER 56. Windfall Profit on Crude Oil.".

(3) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—The first sentence of section 164(a) (relating to deduction for taxes) is amended by inserting after paragraph (5) the following new paragraph:

"(6) The windfall profit tax imposed by section 5896.".

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to crude oil removed after the date of the enactment of this Act, in taxable years ending after such date.

(B) TRANSITIONAL RULES.—For the period ending December 31, 2005, the Secretary of the Treasury or the Secretary's delegate shall prescribe rules relating to the administration of chapter 56 of the Internal Revenue Code of 1986. To the extent provided in such rules, such rules shall supplement or supplant for such period the administrative provisions contained in chapter 56 of such Code (or in so much of subtitle F of such Code as relates to such chapter 56).

(b) ENERGY CONSUMER REBATE.—

(1) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application in the case of abatements, credits, and refunds) is amended by adding at the end the following new section:

"SEC. 6430. ENERGY CONSUMER REBATE.

"(a) GENERAL RULE.—Except as otherwise provided in this section, each individual shall be treated as having made a payment against the tax imposed by chapter 1 for each taxable year beginning after December 31, 2005, in an amount equal to the lesser of—

"(1) the amount of the taxpayer's liability for tax for such taxpayer's preceding taxable year, or

"(2) the applicable amount.

"(b) LIABILITY FOR TAX.—For purposes of this section, the liability for tax for any taxable year shall be the excess (if any) of—

"(1) the sum of—

"(A) the taxpayer's regular tax liability (within the meaning of section 26(b)) for the taxable year,

"(B) the tax imposed by section 55(a) with respect to such taxpayer for the taxable year, and

"(C) the taxpayer's social security taxes (within the meaning of section 24(d)(2)) for the taxable year, over

"(2) the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable under subpart C thereof, relating to refundable credits) for the taxable year.

"(c) APPLICABLE AMOUNT.—For purposes of this section, the applicable amount for any taxpayer shall be determined by the Secretary not later than the date specified in subsection (d)(1) taking into account the number of such taxpayers and the amount of revenues in the Treasury resulting from the tax imposed by section 5896 for the calendar year preceding the taxable year.

"(d) DATE PAYMENT DEEMED MADE.—

"(1) IN GENERAL.—The payment provided by this section shall be deemed made on February 1 of the calendar year ending with or within the taxable year.

''(2) REMITTANCE OF PAYMENT.—The Secretary shall remit to each taxpayer the payment described in paragraph (1) not later that the date which is 30 days after the date specified in paragraph (1).

''(e) CERTAIN PERSONS NOT ELIGIBLE.—This section shall not apply to—

''(1) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins,

''(2) any estate or trust, or

''(3) any nonresident alien individual.''.

(2) CONFORMING AMENDMENT.—Section 1324(b)(2) of title 31, United States Code, is amended by inserting before the period '', or enacted by the Windfall Profits Rebate Act of 2005''.

(3) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end the following new item:

''Sec. 6430. Energy consumer rebate.''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SA 2588. Mr. KENNEDY (for himself, Ms. LANDRIEU, Mr. DURBIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—ELIMINATING CHILD POVERTY

SEC. ____1. SHORT TITLE.

This title may be cited as the ''End Child Poverty Act''.

SEC. ____2. FINDINGS.

Congress makes the following findings:

(1) More than 13,000,000 children in the United States who are younger than 18 live below the poverty line.

(2) Most parents of poor children are playing by the rules by working to support their families. Despite their efforts, many of these parents still cannot help their children get ahead. Seven out of 10 poor children live in a working family and 1 poor child in 3 lives with a full-time year-around worker.

(3) Poor children are at least twice as likely as non-poor children to suffer stunted growth or lead poisoning, or to be kept back in school. Poor children score significantly lower on reading, mathematics, and vocabulary tests when compared with otherwise similar non-poor children. In more than half of poor households with children in the United States, the members of the households experience serious deprivations during the year, including lack of adequate food, utility shutoffs, crowded or substandard housing, or lack of needed medical care.

(4) Over 8,000,000 children under age 18 in the United States lack health insurance. With a 2004 uninsured rate of 18.9 percent, poor children are more likely to be uninsured than children generally.

(5)(A) The members of 1 in 6 households with children in the United States are hungry or on the verge of hunger, largely due to inadequate household income.

(B) Hungry children—

(i) tend to lack nutrients vital to healthy brain development;

(ii) tend to have difficulty focusing their attention and concentrating in school; and

(iii) often have greater emotional and behavioral problems, have weaker immune systems, and are more susceptible to infections, including anemia, than other children.

(6) Child poverty has risen significantly, by 1,440,000 since 2000.

(7) The poverty rate for children in the United States is substantially higher than that in most other wealthy industrialized nations.

(8) Children in the United States are more likely to live in poverty than any other age group in the United States.

(9) African-American and Latino children are much more likely to live in poverty than White children. One third of African-American children are low-income, as are nearly a third of Latino children.

(10) Great Britain made a public commitment to cut child poverty in half in 10 years, and end child poverty by 2020, and it has already successfully lifted 2,000,000 children out of poverty.

(11) Poverty is a moral issue and Congress has a moral obligation to address it.

SEC. ____3. PURPOSES.

The purposes of this title are—

(1) to set a national goal of cutting child poverty in half within a decade, and eliminating child poverty entirely as soon as possible; and

(2) to establish a Child Poverty Elimination Trust Fund as an initial measure to fund Federal programs to achieve that goal.

SEC. ____4. DEVELOPMENT OF PLAN BY CHILD POVERTY ELIMINATION BOARD.

(a) IN GENERAL.—There is established a board to be known as the Child Poverty Elimination Board (referred to in this title as the ''Board'').

(b) COMPOSITION.—

(1) APPOINTMENTS.—The Board shall be composed of 12 voting members, to be appointed not later than 60 days after the date of enactment of this Act, as follows:

(A) SENATORS.—One Senator shall be appointed by the majority leader of the Senate, and one Senator shall be appointed by the minority leader of the Senate.

(B) MEMBERS OF THE HOUSE OF REPRESENTATIVES.—One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the minority leader of the House of Representatives.

(C) ADDITIONAL MEMBERS.—

(i) APPOINTMENT.—Two members each shall be appointed by—

(I) the Speaker of the House of Representatives;

(II) the majority leader of the Senate;

(III) the minority leader of the House of Representatives; and

(IV) the minority leader of the Senate.

(ii) EXPERTISE.—Members appointed under this subparagraph shall be appointed on the basis of demonstrated expertise in child poverty issues.

(2) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Board. Any vacancy on the Board shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(3) CHAIRPERSON AND VICE CHAIRMAN.—The Board shall elect a chairperson and a vice chairperson from among the members of the Board.

(4) MEETINGS.—The Board shall first meet not later than 30 days after the date on which all members are appointed, and the Board shall meet thereafter at the call of the chairperson or vice chairperson or a majority of the members.

(c) PLAN AND REPORT.—

(1) PLAN.—The Board shall meet regularly to develop a plan for cutting child poverty in half within a decade, and eliminating child poverty entirely as soon as possible. The plan shall include recommendations for allocations of funds from the Child Poverty Elimination Trust Fund established in section 9511 of the Internal Revenue Code of 1986, to carry out the plan.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall prepare and submit a report containing the plan to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the President.

(d) POWERS.—

(1) HEARINGS AND SESSIONS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers appropriate. The Board may administer oaths or affirmations to witnesses appearing before it.

(2) ACCESS TO INFORMATION.—The Board may secure directly from any Federal agency information necessary to enable the Board to carry out this title, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Board, the head of such agency shall furnish such information to the Board.

(3) USE OF FACILITIES AND SERVICES.—Upon the request of the Board, the head of any Federal agency may make available to the Board any of the facilities and services of such agency.

(4) PERSONNEL FROM OTHER AGENCIES.—On the request of the Board, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Board or assist the Board in carrying out the duties of the Board. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Board may accept for the Board voluntary services provided by a member of the Board.

(e) COMPENSATION.—

(1) PAY.—Members of the Board shall serve without compensation.

(2) TRAVEL EXPENSES.—Members of the Board shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Board.

SEC. ____5. ISSUANCE AND IMPLEMENTATION OF PLAN.

(a) ISSUANCE.—Not later than 90 days after receiving the report containing the plan developed by the Board under section ____4(c), the President shall review the report, and shall issue a plan for cutting child poverty in half within a decade, and eliminating child poverty entirely as soon as possible. The plan shall include specifications and allocations of funds to be made from the Child Poverty Elimination Trust Fund, to carry out the plan.

(b) RELATIONSHIP TO BOARD PLAN.—The plan issued under subsection (a) shall be the same as the plan developed by the Board under section ____4(c) except insofar as the President may determine, for good cause shown and stated together with the plan issued under subsection (a), that a modification of the Board's plan would be more effective for eliminating child poverty.

(c) IMPLEMENTATION.—Not later than 90 days after issuing a plan under subsection (a), the President shall ensure the implementation of the plan issued under subsection (a), and shall work with Congress to ensure funding for the implementation of the plan.

SEC. _____6. IMPOSITION OF INDIVIDUAL INCOME TAX SURCHARGE TO FUND CHILD POVERTY ELIMINATION FUND.

(a) IN GENERAL.—Section 1 of the Internal Revenue Code of 1986 (relating to imposition of tax on individuals) is amended by adding at the end the following new subsection:

''(j) ADDITIONAL INCOME TAX.—

''(1) IN GENERAL.—If the adjusted gross income of an individual exceeds the threshold amount, the tax imposed by this section (determined without regard to this subsection) shall be increased by an amount equal to 1 percent of so much of the adjusted gross income as exceeds the threshold amount.

''(2) THRESHOLD AMOUNTS.—For purposes of this subsection, the term 'threshold amount' means—

''(A) $1,000,000 in the case of a joint return, and

''(B) $500,000 in the case of any other return.

''(3) TAX NOT TO APPLY TO ESTATES AND TRUSTS.—This subsection shall not apply to an estate or trust.''.

(b) COORDINATION WITH MINIMUM TAX.—Section 55(c) of the Internal Revenue Code of 1986 (defining regular tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) COORDINATION WITH MINIMUM TAX.—Solely for purposes of this section, section 1(j) shall not apply in computing the regular tax.''.

(c) ESTABLISHMENT OF CHILD POVERTY ELIMINATION FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following:

''SEC. 9511. CHILD POVERTY ELIMINATION TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Child Poverty Elimination Trust Fund' (referred to in this section as the 'Trust Fund'), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Trust Fund an amount equivalent to the increase in revenues received in the Treasury as the result of the surtax imposed under section 1(j).

''(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, to make expenditures in connection with Federal programs designed to carry out the plan issued by the President under section _____5 of the End Child Poverty Act, to eliminate child poverty.''.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following:

''Sec. 9511. Child Poverty Elimination Trust Fund.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(e) SECTION 15 NOT TO APPLY.—The amendment made by subsection (a) shall not be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

SA 2589. Mr. MARTINEZ submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

On page 16, line 23, strike ''or Mississippi'' and insert ''Mississippi, Florida, or Texas''

SA 2590. Mr. KOHL (for himself and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. TAX-EXEMPT INTEREST ON FEDERALLY GUARANTEED WATER, WASTEWATER, AND FEDERALLY GUARANTEED ESSENTIAL COMMUNITY FACILITIES LOANS.

(a) IN GENERAL.—Section 149(b)(3)(A) (relating to certain insurance programs) is amended by striking ''or'' at the end of clause (ii), by striking period at the end of clause (iii) and inserting '', or'', and by adding at the end the following new clause:

''(iv) any guarantee by the Secretary of Agriculture pursuant to section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1)) to finance water, wastewater, and essential community facilities.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SA 2591. Mr. MCCONNELL (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill S. 1238, to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes; as follows:

On page 8, line 15, strike ''$15,000,000'' and insert ''$12,000,000''.

On page 8, line 16, strike ''$10,000,000'' and insert ''$8,000,000''.

On page 8, line 17, after ''projects'' insert the following: ''and $4,000,000 of which is authorized to carry out other appropriate conservation projects''.

SA 2592. Mr. MCCONNELL (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill S. 485, to reauthorize and amend the National Geologic Mapping Act of 1992; as follows:

On page 7, line 11, strike ''2010'' and insert ''2015''.

SA 2593. Mr. MCCONNELL (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill S. 1170, an act to establish the Fort Stanton-Snowy River Cave National Conservation Area; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Stanton-Snowy River Cave National Conservation Area Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Fort Stanton-Snowy River Cave National Conservation Area established by section 3(a).

(2) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed for the Conservation Area under section 4(c).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 3. ESTABLISHMENT OF FORT STANTON-SNOWY RIVER CAVE NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT; PURPOSES.—There is established the Fort Stanton–Snowy River Cave National Conservation Area in Lincoln County, New Mexico, to protect, conserve, and enhance the unique and nationally important historic, cultural, scientific, archaeological, natural, and educational subterranean cave resources of the Fort Stanton–Snowy River cave system.

(b) AREA INCLUDED.—The Conservation Area shall include the area within the boundaries depicted on the map entitled ''Fort Stanton–Snowy River Cave National Conservation Area'' and dated November 2005.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall submit to Congress a map and legal description of the Conservation Area.

(2) EFFECT.—The map and legal description of the Conservation Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description of the Conservation Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 4. MANAGEMENT OF THE CONSERVATION AREA.

(a) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Conservation Area—

(A) in a manner that conserves, protects, and enhances the resources and values of the Conservation Area, including the resources and values described in section 3(a); and

(B) in accordance with—

(i) this Act;

(ii) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(iii) any other applicable laws.

(2) USES.—The Secretary shall only allow uses of the Conservation Area that are consistent with the protection of the cave resources.

(3) REQUIREMENTS.—In administering the Conservation Area, the Secretary shall provide for—

(A) the conservation and protection of the natural and unique features and environs for scientific, educational, and other appropriate public uses of the Conservation Area;

(B) public access, as appropriate, while providing for the protection of the cave resources and for public safety;

(C) the continuation of other existing uses or other new uses of the Conservation Area that do not impair the purposes for which the Conservation Area is established;

(D) management of the surface area of the Conservation Area in accordance with the Fort Stanton Area of Critical Environmental Concern Final Activity Plan dated March, 2001, or any amendments to the plan, consistent with this Act; and

(E) scientific investigation and research opportunities within the Conservation Area, including through partnerships with colleges, universities, schools, scientific institutions, researchers, and scientists to conduct research and provide educational and interpretive services within the Conservation Area.

(b) WITHDRAWALS.—Subject to valid existing rights, all Federal surface and subsurface land within the Conservation Area and all land and interests in the land that are acquired by the United States after the date of enactment of this Act for inclusion in the Conservation Area, are withdrawn from—

(1) all forms of entry, appropriation, or disposal under the general land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation under the mineral leasing and geothermal leasing laws.

(c) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the Conservation Area.

(2) PURPOSES.—The management plan shall—

(A) describe the appropriate uses and management of the Conservation Area;

(B) incorporate, as appropriate, decisions contained in any other management or activity plan for the land within or adjacent to the Conservation Area;

(C) take into consideration any information developed in studies of the land and resources within or adjacent to the Conservation Area; and

(D) provide for a cooperative agreement with Lincoln County, New Mexico, to address the historical involvement of the local community in the interpretation and protection of the resources of the Conservation Area.

(d) ACTIVITIES OUTSIDE CONSERVATION AREA.—The establishment of the Conservation Area shall not—

(1) create a protective perimeter or buffer zone around the Conservation Area; or

(2) preclude uses or activities outside the Conservation Area that are permitted under other applicable laws, even if the uses or activities are prohibited within the Conservation Area.

(e) RESEARCH AND INTERPRETIVE FACILITIES.—

(1) IN GENERAL.—The Secretary may establish facilities for—

(A) the conduct of scientific research; and

(B) the interpretation of the historical, cultural, scientific, archaeological, natural, and educational resources of the Conservation Area.

(2) COOPERATIVE AGREEMENTS.—The Secretary may, in a manner consistent with this Act, enter into cooperative agreements with the State of New Mexico and other institutions and organizations to carry out the purposes of this Act.

(f) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation of any water right.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SA 2594. Mr. MCCONNELL (for Mr. DOMENICI) proposed an amendment to the bill S. 1170, An act to establish the Fort Stanton-Snowy River Cave National Conservation Area; as follows:

Amend the title so as to read: ''To establish the Fort Stanton-Snowy River Cave National Conservation Area''.

SA 2595. Mr. SCHUMER (for himself, Mrs. CLINTON, Mr. SMITH, and Mr. WYDEN) submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

SEC. ____. ALLOWANCE OF SPECIAL DEDUCTION FOR CERTAIN NOT-FOR-PROFIT HEALTH INSURANCE OR HEALTH SERVICE TYPE ORGANIZATIONS FOR PURPOSES OF DETERMINING AMT.

(a) IN GENERAL.—Paragraph (3) of section 56(c) (relating to adjustments applicable to organizations) is amended—

(1) by striking ''The deduction'' and inserting the following:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the deduction''; and

(2) by adding at the end the following:

''(B) EXCEPTION FOR CERTAIN NOT-FOR PROFIT HEALTH INSURANCE OR HEALTH SERVICE TYPE ORGANIZATIONS.—Subparagraph (A) shall not apply to an organization described in subparagraph (B) of section 833(c)(4).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SA 2596. Mr. DURBIN proposed an amendment to the bill S. 2020,to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. SENSE OF THE SENATE CONCERNING HEALTH CARE FOR CHILDREN BEFORE TAX CUTS FOR THE WEALTHY.

(a) FINDINGS.—The Senate makes the following findings:

(1) There are more than 9,000,000 children in the United States with no health insurance coverage.

(2) Sixty-seven percent of uninsured children live in families with at least one full-time worker.

(3) According to the Center for Studying Health System Change, uninsured children, when compared to privately insured children, are—

(A) 3.5 times more likely to have gone without needed medical, dental, or other health care;

(B) 4 times more likely to have delayed seeking medical care;

(C) 5 times more likely to go without needed prescription drugs; and

(D) 6.5 times less likely to have a usual source of care.

(4) More than half of these children are eligible for coverage under either the State Children's Health Insurance Program (SCHIP) or Medicaid, but are not enrolled in those safety net programs.

(5) Most States, struggling with budget deficits, have curtailed outreach efforts.

(6) A focus on simple and convenient enrollment and renewal systems, as well as proactive outreach and educational efforts, could help reach these children and reduce the number of uninsured American children.

(7) Some States, seeing that the Federal Government is not providing assistance to middle class families who can't afford health insurance, are trying to extend coverage to some or all children.

(8) State efforts to cover all children will not be successful without financial assistance from the Federal Government.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate should not vote to extend the capital gains and dividend tax cuts, a majority of the benefits of which go to households with incomes over $1,000,000, until Congress has taken steps to ensure that all children in America have access to affordable, quality health insurance;

(2) the Senate should vote instead to use the funds generated by the expiration of the capital gains and dividend tax cuts to further the goal of ensuring that children have access to health insurance coverage by—

(A) awarding grants to States, faith-based organizations, safety net providers, schools, and other community and non-profit organizations to facilitate the enrollment of the 6,800,000 children who are currently eligible for enrollment in the State Children's Health Insurance Program but who are not enrolled;

(B) paying to each State with an approved State Children's Health Insurance Program or Medicaid plan, an amount equal to 90 percent of the sums expended for the design, development, implementation, and evaluation of enrollment systems determined likely to provide more efficient and effective administration of the plan's enrollment and retention of eligible children; and

(C) establishing a grant program under which a State may apply under section 1115 of the Social Security Act to provide medical assistance under the State Children's Health Insurance Program to all children in their State.

SA 2597. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 2020, to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006; which was ordered to lie on the table; as follows:

In section 1(a), strike ''Tax Relief Act of 2005'' and insert ''More Debt for Our Grandchildren Act of 2005''.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, November 16, 2005, at 10:30 a.m. to mark up S. 467, ''Terrorism Risk Insurance Extension Act of 2005,'' and an original bill entitled ''Public Transportation Terrorism Prevention Act of 2005''.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, November 16, 2005, at 10 a.m., on the Magnuson-Stevens Fishery Conservation Reauthorization.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, November 16 at 11:30 a.m. The purpose of this meeting is to consider pending calendar business.

Agenda Item 1: To consider the nomination of Jeffrey D. Jarrett to be Assistant Secretary for Fossil Energy, Department of Energy.

Agenda Item 2: To consider the nomination of Edward F. Sproat III to be

Director, Office of Civilian Radioactive Waste Management, Department of Energy.

In addition, the Committee will consider noncontroversial items that have been agreed to on both sides.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to hold an oversight hearing to examine transportation fuels of the future on November 16, 2005 at 9:30 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, November 16, 2005, at 9:30 a.m. to hold a hearing on ''The High Costs of Crude: The New Currency of Foreign Policy.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, November 16, 2005, at 10 a.m. for a hearing titled, ''Hurricane Katrina: What Can Government Learn from the Private Sector's Response?''.

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

COMMITTEE ON THE JUDICIARY

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Habeas Reform: The Streamlined Procedures Act'' on Wednesday, November 16, 2005 at 9:30 a.m. in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: Ronald Eisenberg, Esq., Deputy District Attorney, Philadelphia District Attorney's Office, Philadelphia, PA; The Honorable Seth Waxman, former Solicitor General of the United States, Partner, Wilmer, Cutler, Pickering, Hale and Dorr, Washington, DC; The Honorable Howard D. McKibben, Senior United States District Judge for the District of Nevada, Chairman of the Judicial Conference Committee on Federal-State Jurisdiction, Reno, NV.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. ENZI. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on November 16, 2005, at 2:30 p.m. to hold a closed briefing.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. ENZI. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts be authorized to meet to conduct a hearing on ''Creating New Federal Judgeships: The Systematic or Piecemeal Approach'' on Wednesday, November 16, 2005 at 2:30 p.m. in Room 226 of the Dirksen Senate Office Building.

Witness List

Panel I: The Honorable W. Royal Furgeson, Jr., District Judge for the Western District of Texas, Chairman of the Judicial Conference Committee on Judicial Resources, San Antonio, TX; The Honorable William H. Steele, U.S. District Judge for the Southern District of Alabama, Mobile, AL; Robyn J. Spalter, Esq., President, Federal Bar Association, Miami, FL.

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

SUBCOMMITTEE ON CONSUMER AFFAIRS, PRODUCT LIABILITY, AND INSURANCE

Mr. ENZI. Mr. President, I ask unanimous consent that the Subcommittee on Consumer Affairs, Product Liability, and Insurance be authorized to meet on Wednesday, November 16, 2005, at 2:30 p.m., on Protecting the Consumer from Flooded and Salvage Vehicle Fraud.

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

PRIVILEGE OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that Stuart Sirkin, a detailee with the Finance Committee, be granted the privilege of the floor during consideration of the pension bill.

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

Mr. AKAKA. I ask unanimous consent a fellow in my office, William Ferraro, be granted floor privileges for the remainder of the debate on the pension bill.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following fellows and interns of the staff of the Finance Committee be allowed floor privileges for the duration of the debate on the tax reconciliation bill: Brian Townsend, Mary Baker, Stuart Sirkin, Richard Litsey, Jorlie Cruz, James Reavis, Jennifer Alwood, Ray Campbell, Will Larson, Andreas Datsopoulos, Mandy Cisneros, and David Hain.

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

Mr. BUNNING. Mr. President, I ask unanimous consent that Dustin Vande Hoef of Senator GRASSLEY's office be granted the privileges of the floor for the duration of deliberation on S. 2020, the Tax Relief Act of 2005.

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

Mr. CORNYN. Mr. President, I ask unanimous consent, on behalf of Senator GRASSLEY, that his staff member, Theresa Pattara, be allowed access to the Senate floor for the duration of the debate on the Tax Relief Act of 2005.

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

DIRECTING THE JOINT COMMITTEE ON THE LIBRARY TO PROCURE A STATUE OF ROSA PARKS FOR PLACEMENT IN THE CAPITOL

Mr. ISAKSON. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration and the Senate now proceed to S. Con. Res. 62.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 62) directing the Joint Committee on the Library to procure a statue of Rosa Parks for placement in the Capitol.

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

Mr. McCONNELL. Mr. President, the Senator from Connecticut and I wish to address a matter that just passed the Senate a few hours ago.

Mr. President, it is the honor and duty of this Senate to recognize the greatness of extraordinary Americans. I am very proud that we have done so today for Rosa Parks. With the passage of S. Con. Res. 62, the Senate has directed the Joint Committee on the Library to commission a statue of Ms. Parks and place it here in the Nation's Capitol, so that Americans who visit this place 100 years from now can see it, and reflect on how one woman's courage altered a nation.

Rosa Parks did not set out to become a hero on the evening of December 1, 1955. She was, like millions of other Americans, merely on her way home after a long day's work. She was a seamstress in Montgomery, AL. But her simple, profound act of civil disobedience was the spark that ignited the modern civil rights movement.

I say to my friend from Connecticut that I was a teenager at the time, living in Augusta, GA. The first 8 years of my life I lived in Alabama. In those days, I think the stereotypical reaction to white southerners was that they all must surely have been against what began that evening with Rosa Parks's appropriate act of defiance. My parents are both deceased, but I remember how inspired they were as white southerners by the act of Rosa Parks. As I make my remarks tonight and listen subsequently to the remarks of my good friend from Connecticut, I remember my parents, who were white southerners born into southern culture who realized that this was not right, and who admired greatly not only Rosa Parks's act of defiance, but the later civil-rights bills that were to come.

For far too many African Americans at that time, America did not live up to its promise of liberty and justice for all. But thanks to Rosa Parks, America was forced to look itself in the mirror, admit its failing, and recommit itself to its founding ideals.

Rosa Parks was headed home that winter night on the Montgomery City bus system, which was segregated. Front-row seats were reserved for white passengers. Blacks were restricted to the back of the bus, and sometimes the middle. But if a white passenger demanded a black person give up his or her seat, they were required to do so.

But on that first day in December 50 years ago, the white bus driver demanded that four African Americans give up their seats so a single white man could sit. Three of them complied. Rosa Parks did not.

''If you don't stand up, I'm going to call the police and have you arrested,'' said the bus driver. But Rosa Parks had had enough. She replied to the driver, ''You may do that.''

With this simple refusal, Rosa Parks set into motion a crusade that would eventually awaken the conscience of our country.

Perhaps the time was right for a nation like America to erase the stain of segregation. But it was not preordained that the struggle would start on that day, in that town, lit by one woman's courage and conviction. We will always thank Rosa Parks that it did.

Rosa Parks' life proved that one American with courage can unshackle millions. Her passing on October 24, just a few weeks ago, left us with sadness, but also with deep gratitude for the gift she left all of us. By honoring her in the Capitol, we show our gratitude.

I wish to thank my many colleagues who cosponsored this bill on both sides of the aisle, and particularly my good friend from Connecticut, Senator DODD, with whom I have collaborated on a number of issues over the years.

Dr. Martin Luther King, Jr. once wrote that ''human progress never rolls in on wheels of inevitability; it comes through the tireless efforts of men.''

This bill helps ensure that Rosa Parks' efforts will never be forgotten.

I yield the floor.

Mr. DODD. Mr. President, let me begin by commending my colleague from Kentucky. I am pleased to be the lead sponsor with him on this resolution and he rightly points out that there are a number of colleagues on both sides of the aisle who have been very supportive of this effort. In fact, I think we might leave this open this evening so that others who wish to be cosponsors may do so before this evening is complete.

I want to particularly thank, in this Chamber this evening, Senator KERRY of Massachusetts who was very interested in this issue and announced his strong support early on of recognizing Rosa Parks. I also want to thank Representative JESSE JACKSON of the House and others on the House side who are also interested in this issue. The House sponsors have taken a different approach to authorizing a statue of Rosa Parks, but that bill has not yet been brought before the House for debate. The action we take today is one way that we can guarantee that Congress can authorize, and immediately have funds to pay for, the commissioning of this statue. I strongly support the efforts of my colleague, Senator MCCONNELL, to expedite this legislation.

I was honored to attend the funeral services here in Washington, DC for Mrs. Parks. The words spoken that day by numerous people were far more eloquent than anything I could add at this particular juncture. But I was struck by the fact that this woman, who refused to give up her seat, who caused a nation to stand up and take note, was physically a rather diminutive, quiet individual who had a long interest in civil rights. Her nonviolent act of defiance was not just a coincidental act. She had been involved in the civil rights movements and had worked with the NAACP and other organizations for sometime.

But as the Senator from Kentucky points out, on that particular day, she was just not going to tolerate any longer a behavior that was so repugnant to the founding principles of this democracy—that was a denial of everything we stood for as a nation. With full recognition of the consequences, her course of action precipitated a year-long boycott in Birmingham of the public bus system. And that was a great sacrifice for the people of the city at that time. To sustain that effort for over a year is really quite a remarkable and significant effort.

It all began on that day some 50 years ago when this wonderful American lady, on her own, decided to take an action that would awaken the interest and collective conscience of a country to recognize, and acknowledge, the great scar of segregation that still existed in some parts of our Nation. And we realize that we have perhaps not yet reached that perfect union that our Founders intended and that each generation of Americans must be newly challenged to achieve it. Rosa Parks was that challenge for her generation and by her solitary, nonviolent act, she changed the course of human history.

This is a long journey. It has been a painful one for many but because of people like Rosa Parks, we are getting closer to our Founders' goal of a perfect union. And that is why it is not only important to preserve and honor her legacy for future generations, but to hold her up as an example of what can be achieved when we challenge ourselves to do better. She is an example to those oppressed in nations around the world that one person, in standing up for what is just and right, can make a difference.

Nelson Mandela once called her ''the David who challenged Goliath.'' People of nations across this globe owe a debt of gratitude to this remarkable woman for her courage that day, for her determination, and for the inspiration she has provided. Now, when visitors come to the Capitol, they, too, can be inspired by this heroic American whose courageous act sparked the flame of liberty and equality for African Americans and minority groups in this country and around the world.

Oprah Winfrey spoke at the funeral services about what it meant to her as a young black woman to hear about Rosa Parks and what she had done. By honoring Rosa Parks with a statue, placed in the most public places of honor in the Capitol, we will have a living symbol of that hope that Rosa Parks brought to millions of young black children 50 years ago. And so generations of children can pass by her statue and be inspired by her story and courage and identify with her greatness.

We honored Rosa Parks by allowing her remains to lie in honor in the Capitol Rotunda. I was priveleged to have been a part of that most appropriate effort. It was an unprecedented event and the first time that a woman had been so recognized. There have been others who have been so honored because of their service as President, or as a general or distinguished military officer, or some connection to the Congress, but only once before had we honored a private citizen. To recognize this extraordinary lady was a noble act and a proud achievement of the leadership of this Congress. Both Democrats and Republicans took time to honor this symbol of freedom by paying their last respects to her in the most public of places, the Capitol Rotunda. And the American people were invited in to share in her struggles and triumphs and pay their respect to this great American, too.

The statue of Rosa Parks will be placed in a very hallowed location in the Capitol. The site has not yet been established, but it may be that location will be in the National Statuary Hall. This resolution authorizes, and indeed requires, that the Joint Committee on the Library consider that option. But it must be in a prominent place where the public can be inspired by her, where Congress and staff can be reminded of her act of courage and her challenge to our leaders to do better. And each of us will be reminded of the opportunities in our lives to make a difference. Maybe not with the same dramatic results as Rosa Parks achieved with her act, but every single citizen of this country will know that he or she has an opportunity to make a difference, in a moment of challenge, to rise and to be courageous, to stand up for what is right.

It is a wonderful lesson for the younger generation to be reminded that one person can make a difference. I often cite individuals who have made a difference, such as the mother who lost a child as a result of a drunk driver and went on to found an organization in her basement called Mothers

Against Drunk Driving, or Lech Walesa, or now Rosa Parks.

Rosa Parks caused this Nation to take note of what it needed to do to end the scourge of segregation. She is not just a national hero, she is the embodiment of our social and human conscience. It is an appropriate and fitting thing that we do here today. I am proud to be a part of it and I hope that generations to come for many, many years will walk past the statue of Rosa Parks in our Nation's Capitol and make a quiet determination to find a moment when they may be as courageous and as noble as this wonderful woman.

Mr. KERRY. Mr. President, it is important that today the Senate is honoring a true national hero, Mrs. Rosa Parks. As you know, I introduced legislation to honor Rosa Parks with a statue in National Statuary Hall. I thank the chair of the Rules Committee, Senator MCCONNELL, and the ranking member, Senator DODD, for amending their legislation to designate Statuary Hall as a venue for a tribute to this great American. I think it is important we ensure that the memory of Rosa Parks is honored by placing a statue of her in the U.S. Capitol so future generations can understand her monumental efforts for civil rights and know the importance of living by her example still today.

I thank Senators MCCONNELL and DODD for working with me and amending their resolution to ensure that Statuary Hall is considered as a possible location for the statue of Mrs. Parks. I also thank the numerous Senators who supported my legislation, S. 1959. I am supporting Mr. MCCONNELL's and Mr. DODD's measure today because I believe it is paramount that we honor Rosa Parks in our Capitol, but I want to be very clear that her statue should be in Statuary Hall.

On November 3, 2005, I introduced legislation to place a statue of Rosa Parks in Statuary Hall in the Capitol. This is a location of great significance, particularly on this occasion and particularly with this individual. While there are memorials for prominent African Americans in the Capitol Collection, none of those are located in the hall that gives a state-by-state account of our country's history. In the struggle for civil rights, some were called to stand up to Bull Connor's fire hoses and police dogs—some to stand up to Klan terrorism—and some to stand up to state sponsored acts of violence. But some were called simply to sit down—at lunch counters in Greensboro and Nashville and Atlanta—or on a bus in Montgomery. This simple action of peaceful opposition to existing rules had a significant impact on the lives of all Americans. Her act of courage on December 1, 1955, inspired a movement that eventually brought about laws to end segregation, ensure voting rights, end discrimination in housing, and create a greater equality throughout this Nation.

It should be noted that I have been working closely with my colleagues in the House of Representatives, particularly with Representative JESSE JACKSON JR. from Illinois, whose bill has over 175 cosponsors to honor Rosa Parks in Statuary Hall. It is identical in content to my original bill, S. 1959, to ensure that Mrs. Parks' statue is placed in Statuary Hall. When the House passes Representative JACKSON's bill, it is my intention to bring that legislation up for a vote in the Senate to ensure that her memory is enshrined in the most hallowed halls of our Government.

This week, Representative JACKSON and I began a national week of action to pass our legislation honoring Rosa Parks with a statue in National Statuary Hall. Our goal is to have Congress pass both bills by December 1, 2005—the 50th anniversary of Rosa Parks' courageous decision not to move to the back of the bus.

Rosa Parks was one of our greatest American heroes, a woman whose quiet courage changed a country. She deserves the highest honors this country can give. I can think of no better way to honor the 50th anniversary of Rosa Parks' brave act against injustice than by passing legislation that ensures that schoolchildren, Members of Congress and presidents visiting the Capitol can see how highly our Nation thinks of her, and that we need to follow her example of refusing to go quietly to the back of the bus.

Mr. ISAKSON. I ask unanimous consent that the amendment at the desk be agreed to, the resolution, as amended, be agreed to, and the motion to reconsider be laid on the table.

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

The amendment (No. 2585) was agreed to, as follows:

(Purpose: To make a technical correction)

On page 1, line 7, at the end add the following: "The Joint Committee on the Library shall consider all locations in the Capital, including Statuary Hall, the Rotunda, and the Capitol Visitor Center."

The concurrent resolution (S. Con. Res. 62), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

(The resolution will be printed in a future edition of the RECORD.)

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2005

Mr. ISAKSON. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 217, S. 1234.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1234) to increase, effective as of December 1, 2005, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

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

Mr. ISAKSON. I ask unanimous consent that the Craig amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid on the table, and any statements be printed in the RECORD.

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

The amendment (No. 2584) was agreed to, as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the " Veterans' Compensation Cost-of-Living Adjustment Act of 2005".

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) VETERANS' DISABILITY COMPENSATION.—Section 1114 of title 38, United States Code, is amended—

(1) in subsection (a), by striking "$106" and inserting "$112";

(2) in subsection (b), by striking "$205" and inserting "$218";

(3) in subsection (c), by striking "$316" and inserting "$337";

(4) in subsection (d), by striking "$454" and inserting "$485";

(5) in subsection (e), by striking "$646" and inserting "$690";

(6) in subsection (f), by striking "$817" and inserting "$873";

(7) in subsection (g), by striking "$1,029" and inserting "$1,099";

(8) in subsection (h), by striking "$1,195" and inserting "$1,277";

(9) in subsection (i), by striking "$1,344" and inserting "$1,436";

(10) in subsection (j), by striking "$2,239" and inserting "$2,393";

(11) in subsection (k)—

(A) by striking "$82" both places it appears and inserting "$87"; and

(B) by striking "$2,785" and "$3,907" and inserting "$2,977" and "$4,176", respectively;

(12) in subsection (l), by striking "$2,785" and inserting "$2,977";

(13) in subsection (m), by striking "$3,073" and inserting "$3,284";

(14) in subsection (n), by striking "$3,496" and inserting "$3,737";

(15) in subsections (o) and (p), by striking "$3,907" each place it appears and inserting "$4,176";

(16) in subsection (r), by striking "$1,677" and "$2,497" and inserting "$1,792" and "$2,669", respectively; and

(17) in subsection (s), by striking "$2,506" and inserting "$2,678".

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) of such title is amended—

(1) in subparagraph (A), by striking "$127" and inserting "$135";

(2) in subparagraph (B), by striking "$219" and "$65" and inserting "$233" and "$68", respectively;

(3) in subparagraph (C), by striking "$86" and "$65" and inserting "$91" and "$68", respectively;

(4) in subparagraph (D), by striking "$103" and inserting "$109";

(5) in subparagraph (E), by striking "$241" and inserting "$257"; and

(6) in subparagraph (F), by striking "$202" and inserting "$215".

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 of such title is amended by striking "$600" and inserting "$641".

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—

(1) NEW LAW DIC.—Section 1311(a) of such title is amended—

(A) in paragraph (1), by striking ''$967'' and inserting ''$1,033''; and

(B) in paragraph (2), by striking ''$208'' and inserting ''$221''.

(2) OLD LAW DIC.—The table in paragraph (3) of such section is amended to read as follows:

''Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$1,033	W–4	$1,236
E–2	1,033	O–1	1,092
E–3	1,033	O–2	1,128
E–4	1,033	O–3	1,207
E–5	1,033	O–4	1,277
E–6	1,033	O–5	1,406
E–7	1,069	O–6	1,585
E–8	1,128	O–7	1,712
E–9	1,177 [1]	O–8	1,879
W–1	1,092	O–9	2,010
W–2	1,135	O–10	2,204 [2]
W–3	1,169		

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,271.

[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,365.''.

(3) ADDITIONAL DIC FOR CHILDREN OR DISABILITY.—Section 1311 of such title is amended—

(A) in subsection (b), by striking ''$241'' and inserting ''$257'';

(B) in subsection (c), by striking ''$241'' and inserting ''$257''; and

(C) in subsection (d), by striking ''$115'' and inserting ''$122''.

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—

(1) DIC WHEN NO SURVIVING SPOUSE.—Section 1313(a) of such title is amended—

(A) in paragraph (1), by striking ''$410'' and inserting ''$438'';

(B) in paragraph (2), by striking ''$590'' and inserting ''$629'';

(C) in paragraph (3), by striking ''$767'' and inserting ''$819''; and

(D) in paragraph (4), by striking ''$767'' and ''$148'' and inserting ''$819'' and ''$157'', respectively.

(2) SUPPLEMENTAL DIC FOR CERTAIN CHILDREN.—Section 1314 of such title is amended—

(A) in subsection (a), by striking ''$241'' and inserting ''$257'';

(B) in subsection (b), by striking ''$410'' and inserting ''$438''; and

(C) in subsection (c), by striking ''$205'' and inserting ''$218''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 1, 2005.

(g) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

Mr. AKAKA. Mr. President, as ranking member of the Senate Committee on Veterans' Affairs, I am extremely pleased that the Senate will pass legislation that will authorize a cost-of-living adjustment, COLA, for veterans' compensation for next year.

The Veterans' Compensation Cost-of-Living Adjustment Act of 2005 directs the Secretary of Veterans Affairs to increase, as of December 1, 2005, the rates of veterans' disability compensation, additional compensation for dependents, the clothing allowance for certain disabled adult children, and dependency and indemnity compensation for surviving spouses and children.

This increase will be the same percentage as the increase provided to Social Security recipients. The increase this year is one of the largest in recent memory—4.1 percent. In my opinion, this increase could not have come at a more crucial time. The COLA is enormously important to veterans and their families. It is critical that veterans' disability compensation rates keep pace with the increasing cost-of-living. Without it, these people would be unable to afford the simple necessities of life. I note, it is well documented that home heating fuel costs will skyrocket this winter. The COLA increase goes a long way to ensuring no veterans are left out in the cold.

Mr. President, in closing, I thank all Senators that voted to support this Nation's veterans.

The bill (S. 1234), as amended, was read the third time and passed.

THE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate en bloc consideration of the following bills reported out of the Energy Committee: Calendar Nos. 236 through 240; 242 through 249; 262 through 273; and H.R. 1972, which is at the desk.

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

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the amendments at the desk be agreed to, the committee-reported amendments, as amended, if amended, be agreed to, the bills, as amended, if amended, be read a third time and passed, and the title amendments be agreed to, all en bloc.

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

ICE AGE FLOODS NATIONAL GEOLOGIC TRAIL DESIGNATION ACT

The Senate proceeded to consider the bill (S. 206) to designate the Ice Age Floods National Geologic Trail, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 206

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 ''Ice Age Floods National Geologic Trail Designation Act of 2005''.

[SEC. 2. FINDINGS AND PURPOSE.

[(a) FINDINGS.—Congress finds that—

[(1) at the end of the last Ice Age, some 12,000 to 17,000 years ago, a series of cataclysmic floods occurred in what is now the northwest region of the United States, leaving a lasting mark of dramatic and distinguishing features on the landscape of parts of the States of Montana, Idaho, Washington and Oregon;

[(2) geological features that have exceptional value and quality to illustrate and interpret this extraordinary natural phenomenon are present on Federal, State, tribal, county, municipal, and private land in the region; and

[(3) in 2001, a joint study team headed by the National Park Service that included about 70 members from public and private entities completed a study endorsing the establishment of an Ice Age Floods National Geologic Trail—

[(A) to recognize the national significance of this phenomenon; and

[(B) to coordinate public and private sector entities in the presentation of the story of the Ice Age floods.

[(b) PURPOSE.—The purpose of this Act is to designate the Ice Age Floods National Geologic Trail in the States of Montana, Idaho, Washington, and Oregon, enabling the public to view, experience, and learn about the features and story of the Ice Age floods through the collaborative efforts of public and private entities.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) ICE AGE FLOODS; FLOODS.—The term ''Ice Age floods'' or ''floods'' means the cataclysmic floods that occurred in what is now the northwestern United States during the last Ice Age from massive, rapid and recurring drainage of Glacial Lake in Missoula, Montana.

[(2) PLAN.—The term ''plan'' means the cooperative management and interpretation plan authorized under section 5(f).

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

[(4) TRAIL.—The term ''Trail'' means the Ice Age Floods National Geologic Trail designated by section 4(a).

[SEC. 4. ICE AGE FLOODS NATIONAL GEOLOGIC TRAIL.

[(a) DESIGNATION.—In order to provide for public appreciation, understanding, and enjoyment of the nationally significant natural and cultural features of the Ice Age floods and to promote collaborative efforts for interpretation and education among public and private entities located along the pathways of the floods, there is designated the Ice Age Floods National Geologic Trail.

[(b) LOCATION.—

[(1) MAP.—The route of the Trail shall be generally depicted on the map entitled ''Ice Age Floods National Geologic Trail,'' numbered ________, and dated ________.

[(2) ROUTE.—The route shall generally follow public roads and highways—

[(A) from the vicinity of Missoula in western Montana;

[(B) across northern Idaho;

[(C) through eastern and southern sections of Washington;

[(D) across northern Oregon in the vicinity of the Willamette Valley and the Columbia River; and

[(E) to the Pacific Ocean.

[(3) REVISION.—The Secretary may revise the map by publication in the Federal Register of a notice of availability of a new map as part of the plan.

[(c) MAP AVAILABILITY.—Any map referred to in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

[SEC. 5. ADMINISTRATION.

[(a) IN GENERAL.—The Secretary, acting through the Director of the National Park Service, shall administer the Trail in accordance with this Act.

[(b) TRAIL MANAGEMENT OFFICE.—In order for the National Park Service to manage the Trail and coordinate Trail activities with other public agencies and private entities, the Secretary may establish and operate a trail management office within the vicinity of the Trail.

[(c) LAND ACQUISITION.—

[(1) IN GENERAL.—If the acquisition is consistent with the plan, the Secretary may acquire land, in a quantity not to exceed 25 acres, for administrative and public information purposes to facilitate the geographic diversity of the Trail throughout the States of Montana, Idaho, Washington, and Oregon.

[(2) METHODS.—

[(A) PRIVATE LAND.—Private land may be acquired from a willing seller under this Act only by donation, purchase with donated or appropriated funds, or exchange.

[(B) NON-FEDERAL PUBLIC LAND.—Non-Federal public land may be acquired from a willing seller under this Act—

[(i) only by donation or exchange; and

[(ii) after consultation with the affected unit of local government.

[(d) INTERPRETIVE FACILITIES.—The Secretary may plan, design, and construct interpretive facilities for sites associated with the Trail if the facilities are constructed in partnership with State, local, tribal, or non-profit entities and are consistent with the plan.

[(e) INTERAGENCY TECHNICAL COMMITTEE.—

[(1) IN GENERAL.—The Secretary shall establish an interagency technical committee to advise the trail management office on the technical planning for the development of the plan.

[(2) COMPOSITION.—The committee—

[(A) shall include—

[(i) representatives from Federal, State, local, and tribal agencies with interests in the floods; and

[(ii) representatives from the Ice Age Floods Institute; and

[(B) may include private property owners, business owners, and nonprofit organizations.

[(f) MANAGEMENT PLAN.—

[(1) IN GENERAL.—Not later than 3 years after funds are made available to carry out this Act under section 6, the Secretary shall prepare a cooperative management and interpretation plan for the Trail.

[(2) CONSULTATION.—The Secretary shall prepare the plan in consultation with—

[(A) State, local, and tribal governments;

[(B) the Ice Age Floods Institute;

[(C) private property owners; and

[(D) other interested parties.

[(3) CONTENTS.—The plan shall—

[(A) confirm and, if appropriate, expand on the inventory of features of the floods contained in the National Park Service study entitled ''Ice Age Floods, Study of Alternatives and Environmental Assessment'' (February 2001) by—

[(i) locating features more accurately;

[(ii) improving the description of features; and

[(iii) reevaluating the features in terms of their interpretive potential;

[(B) review and, if appropriate, modify the map of the Trail referred to in section 4(b);

[(C) describe strategies for the coordinated development of the Trail, including an interpretive plan for facilities, waysides, roadside pullouts, exhibits, media, and programs that present the story of the floods to the public effectively; and

[(D) identify potential partnering opportunities in the development of interpretive facilities and educational programs to educate the public about the story of the floods.

[(g) COOPERATIVE MANAGEMENT.—

[(1) IN GENERAL.—In order to facilitate the development of coordinated interpretation, education, resource stewardship, visitor facility development and operation, and scientific research associated with the Trail and to promote more efficient administration of the sites associated with the Trail, the Secretary may enter into cooperative management agreements with appropriate officials in the States of Montana, Idaho, Washington, and Oregon in accordance with the authority provided for units of the National Park System under section 3(l) of Public Law 91–383 (16 U.S.C. 1a–2(*l*)).

[(2) UNIT OF NATIONAL PARK SYSTEM.—For purposes of this subsection, the Trail shall be considered a unit of the National Park System.

[(h) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with public or private entities to carry out this Act.

[(i) EFFECT ON PRIVATE PROPERTY RIGHTS.—Nothing in this Act—

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

[(2) modifies any provision of Federal, State, or local law with respect to public access to or use of private land.

[(j) LIABILITY.—Designation of the Trail by section 4(a) does not create any liability for, or affect any liability under any law of, any private property owner with respect to any person injured on the private property.

[SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act, of which not more than $500,000 may be used for each fiscal year for the administration of the Trail.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ice Age Floods National Geologic Trail Designation Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) at the end of the last Ice Age, some 12,000 to 17,000 years ago, a series of cataclysmic floods occurred in what is now the northwest region of the United States, leaving a lasting mark of dramatic and distinguishing features on the landscape of parts of the States of Montana, Idaho, Washington and Oregon;

(2) geological features that have exceptional value and quality to illustrate and interpret this extraordinary natural phenomenon are present on Federal, State, tribal, county, municipal, and private land in the region; and

(3) in 2001, a joint study team headed by the National Park Service that included about 70 members from public and private entities completed a study endorsing the establishment of an Ice Age Floods National Geologic Trail—

(A) to recognize the national significance of this phenomenon; and

(B) to coordinate public and private sector entities in the presentation of the story of the Ice Age floods.

(b) PURPOSE.—The purpose of this Act is to designate the Ice Age Floods National Geologic Trail in the States of Montana, Idaho, Washington, and Oregon, enabling the public to view, experience, and learn about the features and story of the Ice Age floods through the collaborative efforts of public and private entities.

SEC. 3. DEFINITIONS.

In this Act:

(1) ICE AGE FLOODS; FLOODS.—The term ''Ice Age floods'' or ''floods'' means the cataclysmic floods that occurred in what is now the northwestern United States during the last Ice Age from massive, rapid and recurring drainage of Glacial Lake in Missoula, Montana.

(2) PLAN.—The term ''plan'' means the cooperative management and interpretation plan authorized under section 5(e).

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

(4) TRAIL.—The term ''Trail'' means the Ice Age Floods National Geologic Trail designated by section 4(a).

SEC. 4. ICE AGE FLOODS NATIONAL GEOLOGIC TRAIL.

(a) DESIGNATION.—In order to provide for public appreciation, understanding, and enjoyment of the nationally significant natural and cultural features of the Ice Age floods and to promote collaborative efforts for interpretation and education among public and private entities located along the pathways of the floods, there is designated the Ice Age Floods National Geologic Trail.

(b) LOCATION.—

(1) MAP.—The route of the Trail shall be generally depicted on the map entitled ''Ice Age Floods National Geologic Trail,'' numbered P43/80,000 and dated June 2004.

(2) ROUTE.—The route shall generally follow public roads and highways.

(3) REVISION.—The Secretary may revise the map by publication in the Federal Register of a notice of availability of a new map as part of the plan.

(c) MAP AVAILABILITY.—The map referred to in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The Secretary, acting through the Director of the National Park Service, shall administer the Trail in accordance with this Act.

(b) LIMITATION.—Except as provided in subsection (f)(2), the Trail shall not be considered to be a unit of the National Park System.

(c) TRAIL MANAGEMENT OFFICE.—To improve management of the Trail and coordinate Trail activities with other public agencies and private entities, the Secretary may establish and operate a trail management office at a central location within the vicinity of the Trail.

(d) INTERPRETIVE FACILITIES.—The Secretary may plan, design, and construct interpretive facilities for sites associated with the Trail if the facilities are constructed in partnership with State, local, tribal, or non-profit entities and are consistent with the plan.

(e) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after funds are made available to carry out this Act, the Secretary shall prepare a cooperative management and interpretation plan for the Trail.

(2) CONSULTATION.—The Secretary shall prepare the plan in consultation with—

(A) State, local, and tribal governments;

(B) the Ice Age Floods Institute;

(C) private property owners; and

(D) other interested parties.

(3) CONTENTS.—The plan shall—

(A) confirm and, if appropriate, expand on the inventory of features of the floods contained in the National Park Service study entitled ''Ice Age Floods, Study of Alternatives and Environmental Assessment'' (February 2001) by—

(i) locating features more accurately;

(ii) improving the description of features; and

(iii) reevaluating the features in terms of their interpretive potential;

(B) review and, if appropriate, modify the map of the Trail referred to in section 4(b);

(C) describe strategies for the coordinated development of the Trail, including an interpretive plan for facilities, waysides, roadside pullouts, exhibits, media, and programs that present the story of the floods to the public effectively; and

(D) identify potential partnering opportunities in the development of interpretive facilities and educational programs to educate the public about the story of the floods.

(f) COOPERATIVE MANAGEMENT.—

(1) IN GENERAL.—In order to facilitate the development of coordinated interpretation, education, resource stewardship, visitor facility development and operation, and scientific research associated with the Trail and to promote more efficient administration of the sites associated with the Trail, the Secretary may enter into cooperative management agreements with appropriate officials in the States of Montana, Idaho, Washington, and Oregon in accordance with the authority provided for units of the National Park System under section 3(l) of Public Law 91–383 (16 U.S.C. 1a–2(l)).

(2) AUTHORITY.—For purposes of this subsection only, the Trail shall be considered a unit of the National Park System.

(g) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with public or private entities to carry out this Act.

(h) EFFECT ON PRIVATE PROPERTY RIGHTS.—Nothing in this Act—

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

(2) modifies any provision of Federal, State, or local law with respect to public access to or use of private land.

(i) LIABILITY.—Designation of the Trail by section 4(a) does not create any liability for, or affect any liability under any law of, any private property owner with respect to any person injured on the private property.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act, of which not more than $12,000,000 may be used for development of the Trail.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 206), as amended, was read the third time and passed.

COLUMBIA SPACE SHUTTLE MEMORIAL ACT OF 2005

The Senate proceeded to consider the bill (S. 242) to establish 4 memorials to the Space Shuttle *Columbia* in the State of Texas, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 242

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 ''Columbia Space Shuttle Memorials Act of 2005''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) MEMORIAL.—The term ''memorial'' means each of the memorials to the Space Shuttle Columbia established by section 3(a).

[(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

[SEC. 3. MEMORIALS TO THE SPACE SHUTTLE COLUMBIA.

[(a) ESTABLISHMENT.—There are established, as units of the National Park System, 4 memorials to the Space Shuttle Columbia to be located on the 4 parcels of land in the State of Texas described in subsection (b) on which large debris from the Space Shuttle Columbia was recovered.

[(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are—

[(1) the parcel of land owned by the Fredonia Corporation, located at the southeast corner of the intersection of East Hospital Street and North Fredonia Street, Nacogdoches, Texas;

[(2) the parcel of land owned by Temple Inland Inc., 10 acres of a 61-acre tract bounded by State Highway 83 and Bayou Bend Road, Hemphill, Texas;

[(3) the parcel of land owned by the city of Lufkin, Texas, located at City Hall Park, 301 Charlton Street, Lufkin, Texas; and

[(4) the parcel of land owned by San Augustine County, Texas, located at 1109 Oaklawn Street, San Augustine, Texas.

[(c) ADMINISTRATION.—The memorials shall be administered by the Secretary.

[(d) ADDITIONAL SITES.—The Secretary may recommend to Congress additional sites in the State of Texas related to the Space Shuttle Columbia for establishment as memorials to the Space Shuttle Columbia.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Columbia Space Shuttle Memorial Study Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MEMORIAL.—The term ''memorial'' means a memorial to the Space Shuttle Columbia the suitability and feasibility of the establishment of which is a subject of the study under section 3(a).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 3. STUDY OF SUITABILITY AND FEASIBILITY OF ESTABLISHING MEMORIALS TO THE SPACE SHUTTLE COLUMBIA.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are made available to carry out this Act, the Secretary shall carry out a study to determine the suitability and feasibility of establishing, as units of the National Park System on land in the State of Texas described in subsection (b) (on which large debris from the Space Shuttle Columbia was recovered), memorials to the Space Shuttle Columbia.

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

(1) the parcel of land owned by the Fredonia Corporation, located at the southeast corner of the intersection of East Hospital Street and North Fredonia Street, Nacogdoches, Texas;

(2) the parcel of land owned by Temple Inland Inc., 10 acres of a 61-acre tract bounded by State Highway 83 and Bayou Bend Road, Hemphill, Texas;

(3) the parcel of land owned by the city of Lufkin, Texas, located at City Hall Park, 301 Charlton Street, Lufkin, Texas; and

(4) the parcel of land owned by San Augustine County, Texas, located at 1109 Oaklawn Street, San Augustine, Texas.

(c) ADMINISTRATION.—In carrying out the study, the Secretary shall assume that, if established after completion of the study, each memorial shall be administered by the Secretary.

(d) ADDITIONAL SITES.—The Secretary may recommend to Congress additional sites in the State of Texas relating to the Space Shuttle Columbia for establishment as memorials to the Space Shuttle Columbia.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

Amend the title so as to read: ''To direct the Secretary of the Interior to carry out a study to determine the suitability and feasibility of establishing memorials to the Space Shuttle *Columbia* on parcels of land in the State of Texas.''.

The committee amendment in the nature of a substitute was agreed to.

The title amendment was agreed to.

The bill (S. 242), as amended, was read the third time and passed.

BETTY DICK RESIDENCE PROTECTION ACT

The Senate proceeded to consider the bill (S. 584) to require the Secretary of the Interior to allow the continued occupancy and use of certain land and improvements within Rocky Mountain National Park, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 584

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 ''Betty Dick Residence Protection Act''.

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) before their divorce, Fred and Marilyn Dick, owned as tenants in common a tract of land that included the property described in section 5(b);

[(2) when Fred and Marilyn Dick divorced, Marilyn Dick became the sole owner of the tract of land, but Fred Dick retained the right of first refusal to acquire the tract of land;

[(3) in 1977, Marilyn Dick sold the tract to the United States for addition to Rocky Mountain National Park, but Fred Dick, asserting his right of first refusal, sued to cancel the transaction;

[(4) in 1980, the lawsuit was settled through an agreement between the National Park Service, Fred Dick, and the heirs, successors, and assigns of Fred Dick;

[(5) under the 1980 settlement agreement, Fred Dick and his wife, Betty Dick, were allowed to lease and occupy the 23 acres comprising the property described in section 5(b) for 25 years;

[(6) Fred Dick died in 1992, but Betty Dick has continued to lease and occupy the property described in section 5(b) under the terms of the settlement agreement;

[(7) Betty Dick's right to lease and occupy the property described in section 5(b) will expire on July 16, 2005, at which time Betty Dick will be 83 years old;

[(8) Betty Dick wishes to continue to occupy the property for the remainder of her life and has sought to enter into a new agreement with the National Park Service that would allow her to continue to occupy the property;

[(9) the National Park Service has not been willing to enter into a new agreement with Betty Dick and is demanding that she vacate the property by July 16, 2005;

[(10) since 1980, Betty Dick—

[(A) has consistently occupied the property described in section 5(b) as a summer residence;

[(B) has made the property available for community events; and

[(C) has been a good steward of the property;

[(11) Betty Dick's occupancy of the property has not—

[(A) been detrimental to the resources and values of Rocky Mountain National Park; or

[(B) created problems for the National Park Service or the public; and

[(12) under the circumstances, it is appropriate for Betty Dick to be allowed to continue her occupancy of the property described in section 5(b) for the remainder of her natural life under the terms and conditions applicable to her occupancy of the property since 1980.

[SEC. 3. PURPOSE.

[The purpose of this Act is to require the Secretary of the Interior to permit the continued occupancy and use of the property described in section 5(b) by Betty Dick for the remainder of her natural life.

[SEC. 4. DEFINITIONS.

[In this Act:

[(1) AGREEMENT.—The term ''Agreement'' means the agreement between the National Park Service and Fred Dick entitled ''Settlement Agreement'' and dated July 17, 1980.

[(2) MAP.—The term ''map'' means the map entitled ''Betty Dick Residence and Barn'' and dated January 2005.

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

[SEC. 5. RIGHT OF OCCUPANCY.

[(a) IN GENERAL.—The Secretary shall allow Betty Dick to continue to occupy and use the property described in subsection (b) for the remainder of the natural life of Betty Dick, subject to the requirements of this Act.

[(b) DESCRIPTION OF PROPERTY.—The property referred to in subsection (a) is the land and any improvements to the land within the boundaries of Rocky Mountain National Park identified on the map as ''residence'', ''occupancy area'', and ''barn''.

[(c) TERMS AND CONDITIONS.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the occupancy and use of the property identified in subsection (b) by Betty Dick shall be subject to the same terms and conditions specified in the Agreement.

[(2) PAYMENT.—In exchange for the continued use and occupancy of the property, Betty Dick shall annually pay to the Secretary an amount equal to $1/25$ of the amount specified in section 3(B) of the Agreement.

[(d) EFFECT.—Nothing in this Act—

[(1) allows the construction of any structure on the property described in subsection (b) not in existence on November 30, 2004; or

[(2) applies to the occupancy or use of the property described in subsection (b) by any person other than Betty Dick.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Betty Dick Residence Protection Act''.

SEC. 2. PURPOSE.

The purpose of this Act is to require the Secretary of the Interior to permit the continued occupancy and use of the property described in section 4(b) by Betty Dick for the remainder of her natural life.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the agreement between the National Park Service and Fred Dick entitled ''Settlement Agreement'' and dated July 17, 1980.

(2) MAP.—The term ''map'' means the map entitled ''RMNP Land Occupancy'' and dated September 2005, which identifies approximately 8 acres for the occupancy and use by the tenant.

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

(4) TENANT.—The term ''tenant'' means Betty Dick, widow of George Fredrick Dick, who held a 25-year reservation of occupancy and use at a property within the boundaries of Rocky Mountain National Park.

SEC. 4. RIGHT OF OCCUPANCY.

(a) IN GENERAL.—The Secretary shall allow the tenant to continue to occupy and use the property described in subsection (b) for the remainder of the natural life of the tenant, subject to the requirements of this Act.

(b) DESCRIPTION OF PROPERTY.—The property referred to in subsection (a) is the land and any improvements to the land within the boundaries of Rocky Mountain National Park identified on the map as ''residence'' and ''occupancy area''.

(c) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Except as otherwise provided in this Act, the occupancy and use of the property identified in subsection (b) by the tenant shall be subject to the same terms and conditions specified in the Agreement.

(2) PAYMENTS.—

(A) IN GENERAL.—In exchange for the continued occupancy and use of the property, the tenant shall annually pay to the Secretary an amount equal to $1/25$ of the amount specified in section 3(B) of the Agreement.

(B) ADVANCE PAYMENT REQUIRED.—The annual payments required under subparagraph (A) shall be paid in advance by not later than May 1 of each year.

(C) DISPOSITION.—Amounts received by the Secretary under this paragraph shall be—

(i) deposited in a special account in the Treasury of the United States; and

(ii) made available, without further appropriation, to the Rocky Mountain National Park until expended.

(3) PUBLIC ACCESS.—The public shall have access to both banks of the main channel of the Colorado River.

(d) TERMINATION.—The right of occupancy and use authorized under this Act—

(1) shall not be extended to any individual other than the tenant; and

(2) shall terminate—

(A) on the death of the tenant;

(B) if the tenant does not make a payment required under subsection (c)(2); or

(C) if the tenant otherwise fails to comply with the terms of this Act.

(e) EFFECT.—Nothing in this Act—

(1) allows the construction of any structure on the property described in subsection (b) not in existence on November 30, 2004; or

(2) applies to the occupancy or use of the property described in subsection (b) by any person other than the tenant.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 584), as amended, was read the third time and passed.

BENJAMIN FRANKLIN NATIONAL MEMORIAL COMMEMORATION ACT OF 2005

The bill (S. 652) to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin, was read the third time and passed; as follows:

S. 652

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 ''Benjamin Franklin National Memorial Commemoration Act of 2005''.

SEC. 2. BENJAMIN FRANKLIN NATIONAL MEMORIAL.

The Secretary of the Interior may provide a grant to the Franklin Institute to—

(1) rehabilitate the Benjamin Franklin National Memorial (including the Franklin statue) in Philadelphia, Pennsylvania; and

(2) develop an interpretive exhibit relating to Benjamin Franklin, to be displayed at a museum adjacent to the Benjamin Franklin National Memorial.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000.

(b) REQUIRED MATCH.—The Secretary of the Interior shall require the Franklin Institute to match any amounts provided to the Franklin Institute under this Act.

RURAL WATER SUPPLY ACT OF 2005

The Senate proceeded to consider the bill (S. 895) to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 895

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

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Rural Water Supply Act of 2005''.

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

[TITLE I—RECLAMATION RURAL WATER SUPPLY ACT OF 2005

[SEC. 101. SHORT TITLE.

[This title may be cited as the ''Reclamation Rural Water Supply Act of 2005''.

⟦SEC. 102. DEFINITIONS.

⟦In this title:

⟦(1) FEDERAL RECLAMATION LAW.—The term ''Federal reclamation law'' means the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

⟦(2) INDIAN.—The term ''Indian'' means an individual who is a member of an Indian tribe.

⟦(3) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

⟦(4) NON-FEDERAL PROJECT ENTITY.—The term ''non-Federal project entity'' means a State, regional, or local authority, Indian tribe or tribal organization, or other qualifying entity, such as a water conservation district, water conservancy district, or rural water district or association.

⟦(5) OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.—

⟦(A) IN GENERAL.—The term ''operations, maintenance, and replacement costs'' means all costs for the operation of a rural water supply project that are necessary for the safe, efficient, and continued functioning of the project to produce the benefits described in a feasibility study.

⟦(B) INCLUSIONS.—The term ''operations, maintenance, and replacement costs'' includes—

⟦(i) repairs of a routine nature that maintain a rural water supply project in a well kept condition;

⟦(ii) replacement of worn-out project elements; and

⟦(iii) rehabilitation activities necessary to bring a deteriorated project back to the original condition of the project.

⟦(C) EXCLUSION.—The term ''operations, maintenance, and replacement costs'' does not include construction costs.

⟦(6) PROGRAM.—The term ''program'' means the rural water supply program established under section 103.

⟦(7) RECLAMATION STATES.—The term ''reclamation States'' means the States and areas referred to in the first section of the Act of June 17, 1902 (43 U.S.C. 391).

⟦(8) RURAL WATER SUPPLY PROJECT.—

⟦(A) IN GENERAL.—The term ''rural water supply project'' means a project that is designed to serve a group of communities, which may include Indian tribes and tribal organizations, dispersed homesites, or rural areas with domestic, industrial, municipal, and residential water, each of which has a population of not more than 50,000 inhabitants.

⟦(B) INCLUSION.—The term ''rural water supply project'' includes—

⟦(i) incidental noncommercial livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre; and

⟦(ii) a project to improve rural water infrastructure, including—

⟦(I) pumps, pipes, wells, and other diversions;

⟦(II) storage tanks and small impoundments;

⟦(III) water treatment facilities for potable water supplies;

⟦(IV) equipment and management tools for water conservation, groundwater recovery, and water recycling; and

⟦(V) appurtenances.

⟦(C) EXCLUSION.—The term ''rural water supply project'' does not include—

⟦(i) commercial irrigation; or

⟦(ii) major impoundment structures.

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

⟦(10) TRIBAL ORGANIZATION.—The term ''tribal organization'' means—

⟦(A) the recognized governing body of an Indian tribe; and

⟦(B) any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or democratically elected by the adult members of the Indian community to be served by the organization.

⟦SEC. 103. RURAL WATER SUPPLY PROGRAM.

⟦(a) IN GENERAL.—The Secretary, in cooperation with non-Federal project entities and consistent with this title, shall establish and carry out a rural water supply program in reclamation States to—

⟦(1) investigate and identify opportunities to ensure safe and adequate rural water supply projects for municipal and industrial use in small communities and rural areas of the reclamation States; and

⟦(2) plan the design and construction, through the conduct of appraisal investigations and feasibility studies, of rural water supply projects in reclamation States.

⟦(b) NON-FEDERAL PROJECT ENTITY.—Any activity carried out under this title shall be carried out in cooperation with a qualifying non-Federal project entity, consistent with this title.

⟦(c) ELIGIBILITY CRITERIA.—Not later than 1 year after the date of enactment of this Act, the Secretary shall, consistent with this title, develop and publish in the Federal Register criteria for—

⟦(1) determining the eligibility of a rural community for assistance under the program; and

⟦(2) prioritizing requests for assistance under the program.

⟦(d) FACTORS.—The criteria developed under subsection (c) shall take into account such factors as whether—

⟦(1) a rural water supply project—

⟦(A) serves—

⟦(i) rural areas and small communities; or

⟦(ii) Indian tribes; or

⟦(B) promotes and applies a regional or watershed perspective to water resources management;

⟦(2) there is an urgent and compelling need for a rural water supply project that would—

⟦(A) improve the health or aesthetic quality of water;

⟦(B) result in continuous, measurable, and significant water quality benefits; or

⟦(C) address current or future water supply needs;

⟦(3) a rural water supply project helps meet applicable requirements established by law; and

⟦(4) a rural water supply project is cost effective.

⟦(e) INCLUSIONS.—The Secretary may include—

⟦(1) to the extent that connection provides a reliable water supply, a connection to preexisting infrastructure (including dams and conveyance channels) as part of a rural water supply project; and

⟦(2) notwithstanding the limitation in section 102(8), a town or community with a population in excess of 50,000 inhabitants in an area served by a rural water supply project if, at the discretion of the Secretary, the town or community is considered to be a critical partner in the rural supply project.

⟦SEC. 104. RURAL WATER PROGRAMS ASSESSMENT.

⟦(a) IN GENERAL.—In consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Director of the Indian Health Service, the Secretary shall develop an assessment of—

⟦(1) the status of all rural water supply projects under the jurisdiction of the Secretary authorized but not completed prior to the date of enactment of this Act, including appropriation amounts, the phase of development, total anticipated costs, and obstacles to completion;

⟦(2) the current plan (including projected financial and workforce requirements) for the completion of the rural water supply projects within the time frames established under the provisions of law authorizing the projects or the final engineering reports for the projects;

⟦(3) the demand for rural water supply projects;

⟦(4) programs within other agencies that can, and a description of the extent to which the programs, provide support for rural water supply projects and water treatment programs in reclamation States, including an assessment of the requirements, funding levels, and conditions for eligibility for the programs assessed; and

⟦(5) the extent of the unmet needs that the Secretary can meet with the program that complements activities undertaken under the authorities already within the jurisdiction of the Secretary and the heads of the agencies with whom the Secretary consults.

⟦(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a detailed report on the assessment conducted under subsection (a).

⟦SEC. 105. APPRAISAL INVESTIGATIONS.

⟦(a) IN GENERAL.—On request of a non-Federal project entity with respect to a proposed rural water supply project that meets the eligibility criteria published under section 103(c) and subject to the availability of appropriations, the Secretary may—

⟦(1) receive and review an appraisal investigation that is—

⟦(A) developed by the non-Federal project entity independent of support from the Secretary; and

⟦(B) submitted to the Secretary by the non-Federal project entity;

⟦(2) conduct an appraisal investigation; or

⟦(3) provide a grant to, or enter into a cooperative agreement with, the non-Federal project entity to conduct an appraisal investigation, if the Secretary determines that—

⟦(A) the non-Federal project entity is qualified to complete the appraisal investigation in accordance with the criteria published under section 103(c); and

⟦(B) using the non-Federal project entity to conduct the appraisal investigation is the lowest cost alternative for completing the appraisal investigation.

⟦(b) DEADLINE.—An appraisal investigation conducted under subsection (a) shall be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated.

⟦(c) APPRAISAL REPORT.—As soon as practicable after an appraisal investigation is submitted to the Secretary under subsection (a)(1) or completed under paragraph (2) or (3) of subsection (a), the Secretary shall prepare an appraisal report that—

⟦(1) considers—

⟦(A) whether the project meets—

⟦(i) the appraisal criteria developed under subsection (d); and

⟦(ii) the eligibility criteria developed under section 103(c);

⟦(B) whether viable water supplies and water rights exist to supply the project, including all practicable water sources such as lower quality waters, nonpotable waters, and water reuse-based water supplies;

⟦(C) whether the project has a positive effect on public health and safety;

⟦(D) whether the project will meet water demand, including projected future needs;

[(E) the extent to which the project provides environmental benefits, including source water protection;

[(F) the ability of the project to supply water consistent with Indian trust responsibilities, as appropriate;

[(G) whether the project applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;

[(H) whether the project—

[(i)(I) implements an integrated resources management approach; or

[(II) enhances water management flexibility, including providing for—

[(aa) local control to manage water supplies under varying water supply conditions; and

[(bb) participation in water banking and markets for domestic and environmental purposes; and

[(ii) promotes long-term protection of water supplies;

[(I) preliminary cost estimates for the project; and

[(J) whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project; and

[(2) provides recommendations on whether a feasibility study should be initiated under section 106(a).

[(d) APPRAISAL CRITERIA.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate criteria (including appraisal factors listed under subsection (c)) against which the appraisal investigations shall be assessed for completeness and appropriateness for a feasibility study.

[(2) INCLUSIONS.—To minimize the cost of a rural water supply project to a non-Federal project entity, the Secretary shall include in the criteria methods to scale the level of effort needed to complete the appraisal investigation relative to the total size and cost of the proposed rural water supply project.

[(e) REVIEW OF APPRAISAL INVESTIGATION.—Not later than 180 days after the date of submission of an appraisal investigation under subsection (a)(1) or the completion of an appraisal investigation under paragraph (2) or (3) of subsection (a), the Secretary shall—

[(1) with respect to an appraisal investigation conducted by a non-Federal project entity under subsection (a)(1), provide to the non-Federal entity an evaluation of whether the appraisal investigation satisfies the criteria promulgated under subsection (d);

[(2) make available to the public, on request, the results of each appraisal investigation conducted under this title; and

[(3) promptly publish in the Federal Register a notice of the availability of the results.

[(f) COSTS.—

[(1) FEDERAL SHARE.—The Federal share of an appraisal investigation conducted under subsection (a) shall be 100 percent of the total cost of the appraisal investigation, up to $200,000.

[(2) NON-FEDERAL SHARE.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), if the cost of conducting an appraisal investigation is more than $200,000, the non-Federal share of the costs in excess of $200,000 shall be 50 percent.

[(B) EXCEPTION.—The Secretary may reduce the non-Federal share required under subparagraph (A) if the Secretary determines that there is an overwhelming Federal interest in the appraisal investigation.

[(g) CONSULTATION; IDENTIFICATION OF FUNDING SOURCES.—In conducting an appraisal investigation under subsection (a)(2), the Secretary shall—

[(1) consult and cooperate with the non-Federal project entity and appropriate State, tribal, regional, and local authorities;

[(2) consult with the heads of appropriate Federal agencies to—

[(A) ensure that the proposed rural water supply project does not duplicate a project carried out under the authority of the agency head; and

[(B) if a duplicate project is being carried out, identify the authority under which the duplicate project is being carried out; and

[(3) identify what funding sources are available for the proposed rural water supply project.

[SEC. 106. FEASIBILITY STUDIES.

[(a) IN GENERAL.—On completion of an appraisal report under section 105(c) that recommends undertaking a feasibility study and subject to the availability of appropriations, the Secretary shall—

[(1) in cooperation with a non-Federal project entity, carry out a study to determine the feasibility of the proposed rural water supply project;

[(2) receive and review a feasibility study that is—

[(A) developed by the non-Federal project entity independent of support from the Secretary; and

[(B) submitted to the Secretary by the non-Federal project entity; or

[(3) provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity to conduct a feasibility study, for submission to the Secretary, if the Secretary determines that—

[(A) the non-Federal entity is qualified to complete the feasibility study in accordance with the criteria promulgated under subsection (d); and

[(B) using the non-Federal project entity to conduct the feasibility study is the lowest cost alternative for completing the appraisal investigation.

[(b) REVIEW OF NON-FEDERAL FEASIBILITY STUDIES.—

[(1) IN GENERAL.—In conducting a review of a feasibility study submitted under paragraph (2) or (3) of subsection (a), the Secretary shall—

[(A) in accordance with the feasibility factors described in subsection (c) and the criteria promulgated under subsection (d), assess the completeness of the feasibility study; and

[(B) if the Secretary determines that a feasibility study is not complete, notify the non-Federal entity of the determination.

[(2) REVISIONS.—If the Secretary determines under paragraph (1)(B) that a feasibility study is not complete, the non-Federal entity shall pay any costs associated with revising the feasibility study.

[(c) FEASIBILITY FACTORS.—Feasibility studies authorized or reviewed under this title shall include an assessment of—

[(1) near- and long-term water demand in the region to be served by the rural water supply project;

[(2) advancement of public health and safety of any existing rural water supply project and other benefits of the proposed rural water supply project;

[(3) alternative new water supplies in the study area, including any opportunities to treat and use low-quality water, nonpotable water, water reuse-based supplies, and brackish and saline waters through innovative and economically viable treatment technologies;

[(4) environmental quality and source water protection issues related to the rural water supply project;

[(5) innovative opportunities for water conservation in the study area to reduce water use and water system costs, including—

[(A) nonstructural approaches to reduce the need for the project; and

[(B) demonstration technologies;

[(6) the extent to which the project and alternatives take advantage of economic incentives and the use of market-based mechanisms;

[(7)(A) the construction costs and projected operations, maintenance, and replacement costs of all alternatives; and

[(B) the economic feasibility and lowest cost method of obtaining the desired results of each alternative, taking into account the Federal cost-share;

[(8) the availability of guaranteed loans for a proposed rural water supply project;

[(9) the financial capability of the non-Federal project entity to pay the non-Federal project entity's proportionate share of the design and construction costs and 100 percent of operations, maintenance, and replacement costs, including the allocation of costs to each non-Federal project entity in the case of multiple entities;

[(10) whether the non-Federal project entity has developed an operations, management, and replacement plan to assist the non-Federal project entity in establishing rates and fees for beneficiaries of the rural water supply project;

[(11)(A) the non-Federal project entity administrative organization that would implement construction, operations, maintenance, and replacement activities; and

[(B) the fiscal, administrative, and operational controls to be implemented to manage the project;

[(12) the extent to which the project addresses Indian trust responsibilities, as appropriate;

[(13) the extent to which assistance for rural water supply is available under other Federal authorities;

[(14) the engineering, environmental, and economic activities to be undertaken to carry out the study;

[(15) the extent to which the project involves partnerships with other State, local, or tribal governments or Federal entities; and

[(16) in the case of a project intended for Indian tribes and tribal organizations, the extent to which the project addresses the goal of economic self-sufficiency.

[(d) FEASIBILITY STUDY CRITERIA.—

[(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate criteria (including the feasibility factors listed under subsection (c)) under which the feasibility studies shall be assessed for completeness and appropriateness.

[(2) INCLUSIONS.—The Secretary shall include in the criteria promulgated under paragraph (1) methods to scale the level of effort needed to complete the feasibility assessment relative to the total size and cost of the proposed rural water supply project and reduce total costs to non-Federal entities.

[(e) FEASIBILITY REPORT.—

[(1) IN GENERAL.—After completion of appropriate feasibility studies for rural water supply projects that address the factors described in subsection (c) and the criteria promulgated under subsection (d), the Secretary shall—

[(A) develop a feasibility report that includes—

[(i) a recommendation of the Secretary on—

[(I) whether the rural water supply project should be authorized for construction; and

[(II) the appropriate non-Federal share of construction costs, which shall be—

[(aa) at least 25 percent of the total construction costs; and

⟦(bb) determined based on an analysis of the capability-to-pay information considered under subsections (c)(9) and (f); and

⟦(ii) if the Secretary recommends that the project should be authorized for construction—

⟦(I) what amount of grants, loan guarantees, or combination of grants and loan guarantees should be used to provide the Federal cost share;

⟦(II) a schedule that identifies the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the rural water supply project; and

⟦(III) an assessment of the financial capability of each non-Federal entity participating in the rural water supply project to pay the allocated annual operation, maintenance, and replacement costs for the rural water supply project;

⟦(B) submit the report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives;

⟦(C) make the report publicly available, along with associated study documents; and

⟦(D) publish in the Federal Register a notice of the availability of the results.

⟦(f) CAPABILITY-TO-PAY.—

⟦(1) IN GENERAL.—In evaluating a proposed rural water supply project under this section, the Secretary shall—

⟦(A) consider the financial capability of any non-Federal project entities participating in the rural water supply project to pay the capital construction costs of the rural water supply project; and

⟦(B) recommend an appropriate Federal share and non-Federal share of the capital construction costs, as determined by the Secretary.

⟦(2) FACTORS.—In determining the financial capability of non-Federal project entities to pay for a rural water supply project under paragraph (1), the Secretary shall evaluate factors for the project area, relative to the State and county average, including—

⟦(A) per capita income;

⟦(B) median household income;

⟦(C) the poverty rate;

⟦(D) the ability of the non-Federal project entity to raise tax revenues or assess fees;

⟦(E) the strength of the balance sheet of the non-Federal project entity; and

⟦(F) the existing cost of water in the region.

⟦(3) INDIAN TRIBES.—In determining the capability-to-pay of Indian tribe project beneficiaries, the Secretary may consider deferring the collection of all or part of the non-Federal construction costs apportioned to Indian tribe project beneficiaries unless or until the Secretary determines that the Indian tribe project beneficiaries should pay—

⟦(A) the costs allocated to the beneficiaries; or

⟦(B) an appropriate portion of the costs.

⟦(g) COST-SHARING REQUIREMENT.—

⟦(1) IN GENERAL.—Except as otherwise provided in this subsection, the Federal share of the cost of a feasibility study carried out under this section shall not exceed 50 percent of the study costs.

⟦(2) FORM.—The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

⟦(3) FINANCIAL HARDSHIP.—The Secretary may increase the Federal share of the costs of a feasibility study if the Secretary determines, based on a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of the study.

⟦(4) LARGER COMMUNITIES.—In conducting a feasibility study of a rural water supply system that includes a community with a population in excess of 50,000 inhabitants, the Secretary may require the community to pay a greater percentage of the non-Federal share than that required for communities with less than 50,000 inhabitants.

⟦(h) CONSULTATION AND COOPERATION.—In addition to the non-Federal project entity, the Secretary shall consult and cooperate with appropriate Federal, State, tribal, regional, and local authorities during the conduct of each feasibility assessment and development of the feasibility report conducted under this title.

⟦SEC. 107. MISCELLANEOUS.

⟦(a) AUTHORITY OF SECRETARY.—The Secretary may enter into contracts, financial assistance agreements, and such other agreements, and promulgate such regulations, as are necessary to carry out this title.

⟦(b) TRANSFER OF PROJECTS.—Nothing in this title authorizes the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership or from private to Federal ownership.

⟦(c) FEDERAL RECLAMATION LAW.—Nothing in this title supersedes or amends any Federal law associated with a project, or portion of a project, constructed under Federal reclamation law.

⟦(d) INTERAGENCY COORDINATION.—The Secretary shall coordinate the program carried out under this title with existing Federal and State rural water and wastewater programs to facilitate the most efficient and effective solution to meeting the water needs of the non-Federal project sponsors.

⟦(e) MULTIPLE INDIAN TRIBES.—In any case in which a contract is entered into with, or a grant is made, to an organization to perform services benefitting more than 1 Indian tribe under this title, the approval of each such Indian tribe shall be a prerequisite to entering into the contract or making the grant.

⟦(f) OWNERSHIP OF FACILITIES.—Title to any facility planned, designed, and recommended for construction under this title is intended to be held by the non-Federal project entity.

⟦(g) EFFECT ON STATE WATER LAW.—

⟦(1) IN GENERAL.—Nothing in this title preempts or affects State water law or an interstate compact governing water.

⟦(2) COMPLIANCE REQUIRED.—The Secretary shall comply with State water laws in carrying out this title.

⟦(h) NO ADDITIONAL REQUIREMENTS.—Nothing in this title requires a feasibility study for, or imposes any other additional requirements with respect to, rural water supply projects or programs that are authorized before the date of enactment of this Act.

⟦SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

⟦(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $20,000,000 for the period of fiscal years 2006 through 2015, to remain available until expended.

⟦(b) RURAL WATER PROGRAMS ASSESSMENT.—Of the amounts made available under subsection (a), not more than $1,000,000 may be made available to carry out section 104 for each of fiscal years 2006 and 2007.

⟦(c) LIMITATION.—No amounts made available under this section shall be used to pay construction costs associated with any rural water supply project.

⟦TITLE II—TWENTY-FIRST CENTURY WATER WORKS ACT

⟦SEC. 201. SHORT TITLE.

⟦This title may be cited as the ''Twenty-First Century Water Works Act''.

⟦SEC. 202. DEFINITIONS.

⟦In this title:

⟦(1) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

⟦(2) LENDER.—The term ''lender'' means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulation (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)).

⟦(3) LOAN GUARANTEE.—The term ''loan guarantee'' means any guarantee, insurance, or other pledge by the Secretary to pay all or part of the principal of, and interest on, a loan or other debt obligation of a non-Federal borrower to a lender.

⟦(4) NON-FEDERAL BORROWER.—The term ''non-Federal borrower'' means—

⟦(A) a State (including a department, agency, or political subdivision of a State); or

⟦(B) a conservancy district, irrigation district, canal company, water users' association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

⟦(5) PROJECT.—The term ''project'' means—

⟦(A) a rural water supply project (as defined in section 102(8)); or

⟦(B) an extraordinary operation and maintenance activity for, or the rehabilitation of, a facility—

⟦(i) that is authorized by Federal reclamation law and constructed by the United States under such law; or

⟦(ii) in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law.

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

⟦SEC. 203. PROJECT ELIGIBILITY.

⟦(a) ELIGIBILITY CRITERIA.—

⟦(1) IN GENERAL.—The Secretary shall develop and publish in the Federal Register criteria for determining the eligibility of a project for financial assistance under section 204.

⟦(2) INCLUSIONS.—Eligibility criteria shall include—

⟦(A) submission of an application by the lender to the Secretary;

⟦(B) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

⟦(C) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to repay the project financing from user fees or other dedicated revenue sources;

⟦(D) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to pay all operations, maintenance, and replacement costs of the project facilities; and

⟦(E) such other criteria as the Secretary determines to be appropriate.

⟦(b) WAIVER.—The Secretary may waive any of the criteria in subsection (a)(2) that the Secretary determines to be duplicative or rendered unnecessary because of an action already taken by the United States.

⟦(c) PROJECTS PREVIOUSLY AUTHORIZED.—A project that was authorized for construction under Federal reclamation laws prior to the date of enactment of this Act shall be eligible for assistance under this title, subject to the criteria established by the Secretary under subsection (a).

⟦(d) CRITERIA FOR RURAL WATER SUPPLY PROJECTS.—A rural water supply project that is determined to be feasible under section 106 is eligible for a loan guarantee under section 204.

[SEC. 204. LOAN GUARANTEES.

[(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary may make available to lenders for a project meeting the eligibility criteria established in section 203 loan guarantees to supplement private-sector or lender financing for the project.

[(b) TERMS AND LIMITATIONS.—

[(1) IN GENERAL.—Loan guarantees under this section for a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines to be appropriate to protect the financial interests of the United States.

[(2) MAXIMUM AMOUNT.—The amount of a loan guarantee shall not exceed 90 percent of the reasonably anticipated eligible project costs.

[(3) INTEREST RATE.—The interest rate on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

[(4) AMORTIZATION.—A loan guarantee under this section shall provide for complete amortization of the loan guarantee within not more than 40 years.

[(5) NON-SUBORDINATION.—In case of bankruptcy, insolvency, or liquidation of the non-Federal borrower, a loan guarantee shall not be subordinated to the claims of any holder of project obligations.

[(c) PREPAYMENT AND REFINANCING.—Any prepayment or refinancing terms on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

[SEC. 205. OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.

[(a) IN GENERAL.—The non-Federal share of operations, maintenance, and replacement costs for a project receiving Federal assistance under this title shall be 100 percent.

[(b) PLAN.—On request of the non-Federal borrower, the Secretary may assist in the development of an operation, maintenance, and replacement plan to provide the necessary framework to assist the non-Federal borrower in establishing rates and fees for project beneficiaries.

[SEC. 206. TITLE TO NEWLY CONSTRUCTED FACILITIES.

[(a) NEW PROJECTS AND FACILITIES.—All new projects or facilities constructed in accordance with this title shall remain under the jurisdiction and control of the non-Federal borrower subject to the terms of the repayment agreement.

[(b) EXISTING PROJECTS AND FACILITIES.—Nothing in this title affects the title of—

[(1) reclamation projects authorized prior to the date of enactment of this Act;

[(2) works supplemental to existing reclamation projects; or

[(3) works constructed to rehabilitate existing reclamation projects.

[SEC. 207. WATER RIGHTS.

[(a) IN GENERAL.—Nothing in this title preempts or affects State water law or an interstate compact governing water.

[(b) COMPLIANCE REQUIRED.—The Secretary shall comply with State water laws in carrying out this title. Nothing in this title affects or preempts State water law or an interstate compact governing water.

[SEC. 208. INTERAGENCY COORDINATION AND COOPERATION.

[The Secretary and the Secretary of Agriculture shall enter into a memorandum of agreement providing for Department of Agriculture financial appraisal functions and loan guarantee administration for activities carried out under this title.

[SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Rural Water Supply Act of 2005''.

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

TITLE I—RECLAMATION RURAL WATER SUPPLY ACT OF 2005

SEC. 101. SHORT TITLE.

This title may be cited as the ''Reclamation Rural Water Supply Act of 2005''.

SEC. 102. DEFINITIONS.

In this title:

(1) CONSTRUCTION.—The term ''construction'' means the installation of new infrastructure and the upgrading of existing facilities in locations in which the infrastructure or facilities are associated with the new infrastructure of a rural water project recommended by the Secretary pursuant to this title.

(2) FEDERAL RECLAMATION LAW.—The term ''Federal reclamation law'' means the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

(3) INDIAN.—The term ''Indian'' means an individual who is a member of an Indian tribe.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) NON-FEDERAL PROJECT ENTITY.—The term ''non-Federal project entity'' means a State, regional, or local authority, Indian tribe or tribal organization, or other qualifying entity, such as a water conservation district, water conservancy district, or rural water district or association.

(6) OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—The term ''operations, maintenance, and replacement costs'' means all costs for the operation of a rural water supply project that are necessary for the safe, efficient, and continued functioning of the project to produce the benefits described in a feasibility study.

(B) INCLUSIONS.—The term ''operations, maintenance, and replacement costs'' includes—

(i) repairs of a routine nature that maintain a rural water supply project in a well kept condition;

(ii) replacement of worn-out project elements; and

(iii) rehabilitation activities necessary to bring a deteriorated project back to the original condition of the project.

(C) EXCLUSION.—The term ''operations, maintenance, and replacement costs'' does not include construction costs.

(7) PROGRAM.—The term ''Program'' means the rural water supply program established under section 103.

(8) RECLAMATION STATES.—The term ''Reclamation States'' means the States and areas referred to in the first section of the Act of June 17, 1902 (43 U.S.C. 391).

(9) RURAL WATER SUPPLY PROJECT.—

(A) IN GENERAL.—The term ''rural water supply project'' means a project that is designed to serve a community or group of communities, each of which has a population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed homesites, or rural areas with domestic, industrial, municipal, and residential water.

(B) INCLUSION.—The term ''rural water supply project'' includes—

(i) incidental noncommercial livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre; and

(ii) a project to improve rural water infrastructure, including—

(I) pumps, pipes, wells, and other diversions;

(II) storage tanks and small impoundments;

(III) water treatment facilities for potable water supplies, including desalination facilities;

(IV) equipment and management tools for water conservation, groundwater recovery, and water recycling; and

(V) appurtenances.

(C) EXCLUSION.—The term ''rural water supply project'' does not include—

(i) commercial irrigation; or

(ii) major impoundment structures.

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

(11) TRIBAL ORGANIZATION.—The term ''tribal organization'' means—

(A) the recognized governing body of an Indian tribe; and

(B) any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or democratically elected by the adult members of the Indian community to be served by the organization.

SEC. 103. RURAL WATER SUPPLY PROGRAM.

(a) IN GENERAL.—The Secretary, in cooperation with non-Federal project entities and consistent with this title, shall establish and carry out a rural water supply program in Reclamation States to—

(1) investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal, and industrial use in small communities and rural areas of the Reclamation States;

(2) plan the design and construction, through the conduct of appraisal investigations and feasibility studies, of rural water supply projects in Reclamation States; and

(3) oversee, as appropriate, the construction of rural water supply projects in Reclamation States that are recommended by the Secretary in a feasibility report developed pursuant to section 106 and subsequently authorized by Congress.

(b) NON-FEDERAL PROJECT ENTITY.—Any activity carried out under this title shall be carried out in cooperation with a qualifying non-Federal project entity, consistent with this title.

(c) ELIGIBILITY CRITERIA.—Not later than 1 year after the date of enactment of this Act, the Secretary shall, consistent with this title, develop and publish in the Federal Register criteria for—

(1) determining the eligibility of a rural community for assistance under the Program; and

(2) prioritizing requests for assistance under the Program.

(d) FACTORS.—The criteria developed under subsection (c) shall take into account such factors as whether—

(1) a rural water supply project—

(A) serves—

(i) rural areas and small communities; or

(ii) Indian tribes; or

(B) promotes and applies a regional or watershed perspective to water resources management;

(2) there is an urgent and compelling need for a rural water supply project that would—

(A) improve the health or aesthetic quality of water;

(B) result in continuous, measurable, and significant water quality benefits; or

(C) address current or future water supply needs;

(3) a rural water supply project helps meet applicable requirements established by law; and

(4) a rural water supply project is cost effective.

(e) INCLUSIONS.—The Secretary may include—

(1) to the extent that connection provides a reliable water supply, a connection to preexisting infrastructure (including impoundments and conveyance channels) as part of a rural water supply project; and

(2) notwithstanding the limitation on population under section 102(9)(A), a town or community with a population in excess of 50,000 inhabitants in an area served by a rural water supply project if, at the discretion of the Secretary, the town or community is considered to be a critical partner in the rural supply project.

SEC. 104. RURAL WATER PROGRAMS ASSESSMENT.

(a) IN GENERAL.—In consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development, and the Secretary of the Army, the Secretary shall develop an assessment of—

(1) the status of all rural water supply projects under the jurisdiction of the Secretary authorized but not completed prior to the date of enactment of this Act, including appropriation amounts, the phase of development, total anticipated costs, and obstacles to completion;

(2) the current plan (including projected financial and workforce requirements) for the completion of the projects identified in paragraph (1) within the time frames established under the provisions of law authorizing the projects or the final engineering reports for the projects;

(3) the demand for new rural water supply projects;

(4) rural water programs within other agencies and a description of the extent to which those programs provide support for rural water supply projects and water treatment programs in Reclamation States, including an assessment of the requirements, funding levels, and conditions of eligibility for the programs assessed;

(5) the extent of the demand that the Secretary can meet with the Program;

(6) how the Program will complement authorities already within the jurisdiction of the Secretary and the heads of the agencies with whom the Secretary consults; and

(7) improvements that can be made to coordinate and integrate the authorities of the agencies with programs evaluated under paragraph (4), including any recommendations to consolidate some or all of the activities of the agencies with respect to rural water supply.

(b) CONSULTATION WITH STATES.—Before finalizing the assessment developed under subsection (a), the Secretary shall solicit comments from States with identified rural water needs.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a detailed report on the assessment conducted under subsection (a).

SEC. 105. APPRAISAL INVESTIGATIONS.

(a) IN GENERAL.—On request of a non-Federal project entity with respect to a proposed rural water supply project that meets the eligibility criteria published under section 103(c) and subject to the availability of appropriations, the Secretary may—

(1) receive and review an appraisal investigation that is—

(A) developed by the non-Federal project entity, with or without support from the Secretary; and

(B) submitted to the Secretary by the non-Federal project entity;

(2) conduct an appraisal investigation; or

(3) provide a grant to, or enter into a cooperative agreement with, the non-Federal project entity to conduct an appraisal investigation, if the Secretary determines that—

(A) the non-Federal project entity is qualified to complete the appraisal investigation in accordance with the criteria published under section 103(c); and

(B) using the non-Federal project entity to conduct the appraisal investigation is a cost-effective alternative for completing the appraisal investigation.

(b) DEADLINE.—An appraisal investigation conducted under subsection (a) shall be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated.

(c) APPRAISAL REPORT.—In accordance with subsection (f), after an appraisal investigation is submitted to the Secretary under subsection (a)(1) or completed under paragraph (2) or (3) of subsection (a), the Secretary shall prepare an appraisal report that—

(1) considers—

(A) whether the project meets—

(i) the appraisal criteria developed under subsection (d); and

(ii) the eligibility criteria developed under section 103(c);

(B) whether viable water supplies and water rights exist to supply the project, including all practicable water sources such as lower quality waters, nonpotable waters, and water reuse-based water supplies;

(C) whether the project has a positive effect on public health and safety;

(D) whether the project will meet water demand, including projected future needs;

(E) the extent to which the project provides environmental benefits, including source water protection;

(F) whether the project applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;

(G) whether the project—

(i)(I) implements an integrated resources management approach; or

(II) enhances water management flexibility, including providing for—

(aa) local control to manage water supplies under varying water supply conditions; and

(bb) participation in water banking and markets for domestic and environmental purposes; and

(ii) promotes long-term protection of water supplies;

(H) preliminary cost estimates for the project; and

(I) whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project; and

(2) provides recommendations on whether a feasibility study should be initiated under section 106(a).

(d) APPRAISAL CRITERIA.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate criteria (including appraisal factors listed under subsection (c)) against which the appraisal investigations shall be assessed for completeness and appropriateness for a feasibility study.

(2) INCLUSIONS.—To minimize the cost of a rural water supply project to a non-Federal project entity, the Secretary shall include in the criteria methods to scale the level of effort needed to complete the appraisal investigation relative to the total size and cost of the proposed rural water supply project.

(e) REVIEW OF APPRAISAL INVESTIGATION.—

(1) IN GENERAL.—Not later than 90 days after the date of submission of an appraisal investigation under paragraph (1) or (3) of subsection (a), the Secretary shall provide to the non-Federal entity that conducted the investigation a determination of whether the investigation has included the information necessary to determine whether the proposed rural water supply project satisfies the criteria promulgated under subsection (d).

(2) NO SATISFACTION OF CRITERIA.—If the Secretary determines that the appraisal investigation submitted by a non-Federal entity does not satisfy the criteria promulgated under subsection (d), the Secretary shall inform the non-Federal entity of the reasons why the appraisal investigation is deficient.

(3) RESPONSIBILITY OF SECRETARY.—If an appraisal investigation as first submitted by a non-Federal entity does not provide all necessary information, as defined by the Secretary, the Secretary shall have no obligation to conduct further analysis until the non-Federal project entity submitting the appraisal study conducts additional investigation and resubmits the appraisal investigation under this subsection.

(f) APPRAISAL REPORT.—Once the Secretary has determined that an investigation provides the information necessary under subsection (e), the Secretary shall—

(1) complete the appraisal report required under subsection (c);

(2) make available to the public, on request, the appraisal report prepared under this title; and

(3) promptly publish in the Federal Register a notice of the availability of the results.

(g) COSTS.—

(1) FEDERAL SHARE.—The Federal share of an appraisal investigation conducted under subsection (a) shall be 100 percent of the total cost of the appraisal investigation, up to $200,000.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if the cost of conducting an appraisal investigation is more than $200,000, the non-Federal share of the costs in excess of $200,000 shall be 50 percent.

(B) EXCEPTION.—The Secretary may reduce the non-Federal share required under subparagraph (A) if the Secretary determines that there is an overwhelming Federal interest in the appraisal investigation.

(C) FORM.—The non-Federal share under subparagraph (A) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the appraisal investigation.

(h) CONSULTATION; IDENTIFICATION OF FUNDING SOURCES.—In conducting an appraisal investigation under subsection (a)(2), the Secretary shall—

(1) consult and cooperate with the non-Federal project entity and appropriate State, tribal, regional, and local authorities;

(2) consult with the heads of appropriate Federal agencies to—

(A) ensure that the proposed rural water supply project does not duplicate a project carried out under the authority of the agency head; and

(B) if a duplicate project is being carried out, identify the authority under which the duplicate project is being carried out; and

(3) identify what funding sources are available for the proposed rural water supply project.

SEC. 106. FEASIBILITY STUDIES.

(a) IN GENERAL.—On completion of an appraisal report under section 105(c) that recommends undertaking a feasibility study and subject to the availability of appropriations, the Secretary shall—

(1) in cooperation with a non-Federal project entity, carry out a study to determine the feasibility of the proposed rural water supply project;

(2) receive and review a feasibility study that is—

(A) developed by the non-Federal project entity, with or without support from the Secretary; and

(B) submitted to the Secretary by the non-Federal project entity; or

(3) provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity to conduct a feasibility study, for submission to the Secretary, if the Secretary determines that—

(A) the non-Federal entity is qualified to complete the feasibility study in accordance with the criteria promulgated under subsection (d); and

(B) using the non-Federal project entity to conduct the feasibility study is a cost-effective alternative for completing the appraisal investigation.

(b) REVIEW OF NON-FEDERAL FEASIBILITY STUDIES.—

(1) IN GENERAL.—In conducting a review of a feasibility study submitted under paragraph (2) or (3) of subsection (a), the Secretary shall—

(A) in accordance with the feasibility factors described in subsection (c) and the criteria promulgated under subsection (d), assess the completeness of the feasibility study; and

(B) if the Secretary determines that a feasibility study is not complete, notify the non-Federal entity of the determination.

(2) REVISIONS.—If the Secretary determines under paragraph (1)(B) that a feasibility study is not complete, the non-Federal entity shall pay any costs associated with revising the feasibility study.

(c) FEASIBILITY FACTORS.—Feasibility studies authorized or reviewed under this title shall include an assessment of—

(1) near- and long-term water demand in the area to be served by the rural water supply project;

(2) advancement of public health and safety of any existing rural water supply project and other benefits of the proposed rural water supply project;

(3) alternative new water supplies in the study area, including any opportunities to treat and use low-quality water, nonpotable water, water reuse-based supplies, and brackish and saline waters through innovative and economically viable treatment technologies;

(4) environmental quality and source water protection issues related to the rural water supply project;

(5) innovative opportunities for water conservation in the study area to reduce water use and water system costs, including—

(A) nonstructural approaches to reduce the need for the project; and

(B) demonstration technologies;

(6) the extent to which the project and alternatives take advantage of economic incentives and the use of market-based mechanisms;

(7)(A) the construction costs and projected operations, maintenance, and replacement costs of all alternatives; and

(B) the economic feasibility and lowest cost method of obtaining the desired results of each alternative, taking into account the Federal cost-share;

(8) the availability of guaranteed loans for a proposed rural water supply project;

(9) the financial capability of the non-Federal project entity to pay the non-Federal project entity's proportionate share of the design and construction costs and 100 percent of operations, maintenance, and replacement costs, including the allocation of costs to each non-Federal project entity in the case of multiple entities;

(10) whether the non-Federal project entity has developed an operations, management, and replacement plan to assist the non-Federal project entity in establishing rates and fees for beneficiaries of the rural water supply project that includes a schedule identifying the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the project;

(11)(A) the non-Federal project entity administrative organization that would implement construction, operations, maintenance, and replacement activities; and

(B) the fiscal, administrative, and operational controls to be implemented to manage the project;

(12) the extent to which assistance for rural water supply is available under other Federal authorities;

(13) the engineering, environmental, and economic activities to be undertaken to carry out the proposed rural water supply project;

(14) the extent to which the project involves partnerships with other State, local, or tribal governments or Federal entities; and

(15) in the case of a project intended for Indian tribes and tribal organizations, the extent to which the project addresses the goal of economic self-sufficiency.

(d) FEASIBILITY STUDY CRITERIA.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate criteria (including the feasibility factors listed under subsection (c)) under which the feasibility studies shall be assessed for completeness and appropriateness.

(2) INCLUSIONS.—The Secretary shall include in the criteria promulgated under paragraph (1) methods to scale the level of effort needed to complete the feasibility assessment relative to the total size and cost of the proposed rural water supply project and reduce total costs to non-Federal entities.

(e) FEASIBILITY REPORT.—

(1) IN GENERAL.—After completion of appropriate feasibility studies for rural water supply projects that address the factors described in subsection (c) and the criteria promulgated under subsection (d), the Secretary shall—

(A) develop a feasibility report that includes—

(i) a recommendation of the Secretary on—

(I) whether the rural water supply project should be authorized for construction; and

(II) the appropriate non-Federal share of construction costs, which shall be—

(aa) at least 25 percent of the total construction costs; and

(bb) determined based on an analysis of the capability-to-pay information considered under subsections (c)(9) and (f); and

(ii) if the Secretary recommends that the project should be authorized for construction—

(I) what amount of grants, loan guarantees, or combination of grants and loan guarantees should be used to provide the Federal cost share;

(II) a schedule that identifies the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the rural water supply project; and

(III) an assessment of the financial capability of each non-Federal entity participating in the rural water supply project to pay the allocated annual operation, maintenance, and replacement costs for the rural water supply project;

(B) submit the report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives;

(C) make the report publicly available, along with associated study documents; and

(D) publish in the Federal Register a notice of the availability of the results.

(f) CAPABILITY-TO-PAY.—

(1) IN GENERAL.—In evaluating a proposed rural water supply project under this section, the Secretary shall—

(A) consider the financial capability of any non-Federal project entities participating in the rural water supply project to pay 25 percent or more of the capital construction costs of the rural water supply project; and

(B) recommend an appropriate Federal share and non-Federal share of the capital construction costs, as determined by the Secretary.

(2) FACTORS.—In determining the financial capability of non-Federal project entities to pay for a rural water supply project under paragraph (1), the Secretary shall evaluate factors for the project area, relative to the State average, including—

(A) per capita income;

(B) median household income;

(C) the poverty rate;

(D) the ability of the non-Federal project entity to raise tax revenues or assess fees;

(E) the strength of the balance sheet of the non-Federal project entity; and

(F) the existing cost of water in the region.

(3) INDIAN TRIBES.—In determining the capability-to-pay of Indian tribe project beneficiaries, the Secretary may consider deferring the collection of all or part of the non-Federal construction costs apportioned to Indian tribe project beneficiaries unless or until the Secretary determines that the Indian tribe project beneficiaries should pay—

(A) the costs allocated to the beneficiaries; or

(B) an appropriate portion of the costs.

(g) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the Federal share of the cost of a feasibility study carried out under this section shall not exceed 50 percent of the study costs.

(2) FORM.—The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

(3) FINANCIAL HARDSHIP.—The Secretary may increase the Federal share of the costs of a feasibility study if the Secretary determines, based on a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of the study.

(4) LARGER COMMUNITIES.—In conducting a feasibility study of a rural water supply system that includes a community with a population in excess of 50,000 inhabitants, the Secretary may require the non-Federal project entity to pay more than 50 percent of the costs of the study.

(h) CONSULTATION AND COOPERATION.—In addition to the non-Federal project entity, the Secretary shall consult and cooperate with appropriate Federal, State, tribal, regional, and local authorities during the conduct of each feasibility assessment and development of the feasibility report conducted under this title.

SEC. 107. MISCELLANEOUS.

(a) AUTHORITY OF SECRETARY.—The Secretary may enter into contracts, financial assistance agreements, and such other agreements, and promulgate such regulations, as are necessary to carry out this title.

(b) TRANSFER OF PROJECTS.—Nothing in this title authorizes the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership or from private to Federal ownership.

(c) FEDERAL RECLAMATION LAW.—Nothing in this title supersedes or amends any Federal law associated with a project, or portion of a project, constructed under Federal reclamation law.

(d) INTERAGENCY COORDINATION.—The Secretary shall coordinate the Program carried out under this title with existing Federal and State rural water and wastewater programs to facilitate the most efficient and effective solution to meeting the water needs of the non-Federal project sponsors.

(e) MULTIPLE INDIAN TRIBES.—In any case in which a contract is entered into with, or a grant is made, to an organization to perform services benefitting more than 1 Indian tribe under this title, the approval of each such Indian tribe shall be a prerequisite to entering into the contract or making the grant.

(f) OWNERSHIP OF FACILITIES.—Title to any facility planned, designed, and recommended for construction under this title shall be held by the non-Federal project entity.

(g) EXPEDITED PROCEDURES.—If the Secretary determines that a community to be served by a proposed rural water supply project has urgent and compelling water needs, the Secretary shall, to the maximum extent practicable, expedite appraisal investigations and reports conducted under section 105 and feasibility studies and reports conducted under section 106.

(h) EFFECT ON STATE WATER LAW.—

(1) IN GENERAL.—Nothing in this title preempts or affects State water law or an interstate compact governing water.

(2) COMPLIANCE REQUIRED.—The Secretary shall comply with State water laws in carrying out this title.

(i) NO ADDITIONAL REQUIREMENTS.—Nothing in this title requires a feasibility study for, or imposes any other additional requirements with respect to, rural water supply projects or programs that are authorized before the date of enactment of this Act.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $20,000,000 for the period of fiscal years 2006 through 2015, to remain available until expended.

(b) RURAL WATER PROGRAMS ASSESSMENT.—Of the amounts made available under subsection (a), not more than $1,000,000 may be made available to carry out section 104 for each of fiscal years 2006 and 2007.

(c) LIMITATION.—No amounts made available under this section shall be used to pay construction costs associated with any rural water supply project.

TITLE II—TWENTY-FIRST CENTURY WATER WORKS ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Twenty-First Century Water Works Act''.

SEC. 202. DEFINITIONS.

In this title:

(1) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(2) LENDER.—The term ''lender'' means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulation (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)).

(3) LOAN GUARANTEE.—The term ''loan guarantee'' has the meaning given the term ''loan guarantee'' in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(4) NON-FEDERAL BORROWER.—The term ''non-Federal borrower'' means—

(A) a State (including a department, agency, or political subdivision of a State); or

(B) a conservancy district, irrigation district, canal company, water users' association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

(5) OBLIGATION.—The term ''obligation'' means a loan or other debt obligation that is guaranteed under this section.

(6) PROJECT.—The term ''project'' means—

(A) a rural water supply project (as defined in section 102(9)); or

(B) an extraordinary operation and maintenance activity for, or the rehabilitation of, a facility—

(i) that is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law.

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

SEC. 203. PROJECT ELIGIBILITY.

(a) ELIGIBILITY CRITERIA.—

(1) IN GENERAL.—The Secretary shall develop and publish in the Federal Register criteria for determining the eligibility of a project for financial assistance under section 204.

(2) INCLUSIONS.—Eligibility criteria shall include—

(A) submission of an application by the lender to the Secretary;

(B) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

(C) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to repay the project financing from user fees or other dedicated revenue sources;

(D) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to pay all operations, maintenance, and replacement costs of the project facilities; and

(E) such other criteria as the Secretary determines to be appropriate.

(b) WAIVER.—The Secretary may waive any of the criteria in subsection (a)(2) that the Secretary determines to be duplicative or rendered unnecessary because of an action already taken by the United States.

(c) PROJECTS PREVIOUSLY AUTHORIZED.—A project that was authorized for construction under Federal reclamation laws prior to the date of enactment of this Act shall be eligible for assistance under this title, subject to the criteria established by the Secretary under subsection (a).

(d) CRITERIA FOR RURAL WATER SUPPLY PROJECTS.—A rural water supply project that is determined to be feasible under section 106 is eligible for a loan guarantee under section 204.

SEC. 204. LOAN GUARANTEES.

(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary may make available to lenders for a project meeting the eligibility criteria established in section 203 loan guarantees to supplement private-sector or lender financing for the project.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—Loan guarantees under this section for a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines to be appropriate to protect the financial interests of the United States.

(2) AMOUNT.—Loan guarantees by the Secretary shall not exceed an amount equal to 90 percent of the cost of the project that is the subject of the loan guarantee, as estimated at the time at which the loan guarantee is issued.

(3) INTEREST RATE.—An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(4) AMORTIZATION.—A loan guarantee under this section shall provide for complete amortization of the loan guarantee within not more than 40 years.

(5) NONSUBORDINATION.—An obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(c) PREPAYMENT AND REFINANCING.—Any prepayment or refinancing terms on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

SEC. 205. DEFAULTS.

(a) PAYMENTS BY SECRETARY.—

(1) IN GENERAL.—If a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(2) PAYMENT REQUIRED.—By such date as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on, and unpaid principal of, the obligation with respect to which the borrower has defaulted, unless the Secretary finds that there was not default by the borrower in the payment of interest or principal or that the default has been remedied.

(3) FORBEARANCE.—Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the non-Federal borrower that may be agreed on by the parties to the obligation and approved by the Secretary.

(b) SUBROGATION.—

(1) IN GENERAL.—If the Secretary makes a payment under subsection (a), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the loan guarantee or related agreements, including, as appropriate, the authority (nothwithstanding any other provision of law) to—

(A) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to the loan guarantee or related agreements; or

(B) permit the non-Federal borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines the purposes to be in the public interest.

(2) SUPERIORITY OF RIGHTS.—The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) PAYMENT OF PRINCIPAL AND INTEREST BY SECRETARY.—With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the non-Federal borrower, from funds appropriated for that purpose, the principal and interest payments that become due and payable on the unpaid balance of the obligation if the Secretary finds that—

(1)(A) the non-Federal borrower is unable to meet the payments and is not in default;

(B) it is in the public interest to permit the non-Federal borrower to continue to pursue the purposes of the project; and

(C) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(2) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the non-Federal borrower is obligated to pay under the agreement being guaranteed; and

(3) the borrrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(d) ACTION BY ATTORNEY GENERAL.—

(1) NOTIFICATION.—If the non-Federal borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(2) RECOVERY.—On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

(A) such assets of the defaulting non-Federal borrower as are associated with the obligation; or

(B) any other security pledged to secure the obligation.

SEC. 206. OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.

(a) IN GENERAL.—The non-Federal share of operations, maintenance, and replacement costs for a project receiving Federal assistance under this title shall be 100 percent.

(b) PLAN.—On request of the non-Federal borrower, the Secretary may assist in the development of an operation, maintenance, and replacement plan to provide the necessary framework to assist the non-Federal borrower in establishing rates and fees for project beneficiaries.

SEC. 207. TITLE TO NEWLY CONSTRUCTED FACILITIES.

(a) NEW PROJECTS AND FACILITIES.—All new projects or facilities constructed in accordance with this title shall remain under the jurisdiction and control of the non-Federal borrower subject to the terms of the repayment agreement.

(b) EXISTING PROJECTS AND FACILITIES.—Nothing in this title affects the title of—

(1) reclamation projects authorized prior to the date of enactment of this Act;

(2) works supplemental to existing reclamation projects; or

(3) works constructed to rehabilitate existing reclamation projects.

SEC. 208. WATER RIGHTS.

(a) IN GENERAL.—Nothing in this title preempts or affects State water law or an interstate compact governing water.

(b) COMPLIANCE REQUIRED.—The Secretary shall comply with State water laws in carrying out this title. Nothing in this title affects or preempts State water law or an interstate compact governing water.

SEC. 209. INTERAGENCY COORDINATION AND COOPERATION.

(a) CONSULTATION.—The Secretary shall consult with the Secretary of Agriculture before promulgating criteria with respect to financial appraisal functions and loan guarantee administration for activities carried out under this title.

(b) MEMORANDUM OF AGREEMENT.—The Secretary and the Secretary of Agriculture may enter into a memorandum of agreement providing for Department of Agriculture financial appraisal functions and loan guarantee administration for activities carried out under this title.

SEC. 210. RECORDS; AUDITS.

(a) IN GENERAL.—A recipient of a loan guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(b) ACCESS.—The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

SEC. 211. FULL FAITH AND CREDIT.

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 895), as amended, was read the third time and passed.

STAR-SPANGLED BANNER NATIONAL HISTORIC TRAIL ACT

The Senate proceeded to consider the bill (S. 958) to amend the National Trails System Act to designate the Star-Spangled Banner Trail in the State of Maryland and Virginia and the District of Columbia as a National Historic Trail, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 958

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 ''Star-Spangled Banner National Historic Trail Act''.

SEC. 2. AUTHORIZATION AND ADMINISTRATION OF TRAIL.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by adding at the end the following:

''(25) STAR-SPANGLED BANNER NATIONAL HISTORIC TRAIL.—

[''(A) IN GENERAL.—**The Star-Spangled Banner National Historic Trail (referred to in this paragraph as the 'trail'), an approximately 290-mile long trail extending from southern**]

''*(A) IN GENERAL.—The Star-Spangled Banner National Historic Trail, a trail consisting of water and overland routes totaling approximately 290 miles extending from southern* Maryland through the District of Columbia and Virginia, and north to Baltimore, Maryland, commemorating the Chesapeake Campaign of the War of 1812 (including the British invasion of Washington, District of Columbia, and its associated feints and the Battle of Baltimore in summer 1814), as generally depicted on the maps contained in the [draft] report entitled 'Star-Spangled Banner National Historic Trail Feasibility Study and Environmental Impact Statement', and dated March 2004.

''(B) MAP.—A map generally depicting the trail shall be maintained on file and available for public inspection in the appropriate offices of the National Park Service.

''(C) ADMINISTRATION.—Subject to subparagraph (E)(ii), the trail shall be administered by the Secretary of the Interior.

''(D) LAND ACQUISITION.—No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the United States for the trail except with the consent of the owner of the land or interest in land.

''(E) PUBLIC PARTICIPATION.—The Secretary of the Interior shall—

''(i) encourage communities, owners of land along the trail, and volunteer trail groups to participate in the planning, development, and maintenance of the trail; and

''(ii) consult with other affected landowners and Federal, State, and local agencies in the administration of the trail.

''(F) INTERPRETATION AND ASSISTANCE.—Subject to the availability of appropriations, the Secretary of the Interior may provide to State and local governments and nonprofit organizations interpretive programs and services and, through Fort McHenry National Monument and Shrine, technical assistance, for use in carrying out preservation and development of, and education relating to the War of 1812 along, the trail.''.

The committee amendments were agreed to.

The bill (S. 958), as amended, was read the third time and passed, as follows:

S. 958

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 ''Star-Spangled Banner National Historic Trail Act''.

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ACADIA NATIONAL PARK IMPROVEMENT ACT OF 2005

The Senate proceeded to consider the bill (S. 1154) to extend the Acadia National Park Advisory Commission, to provide improved visitor services at the park, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1154

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 ''Acadia National Park Improvement Act of 2005''.

SEC. 2. EXTENSION OF ACADIA NATIONAL PARK ADVISORY COMMISSION.

Section 103(f) of Public Law 99–420 (16 U.S.C. 341 note) is amended by striking ''20'' and inserting ''40''.

SEC. 3. INCREASE IN LAND ACQUISITION CEILING.

Section 106(a) of Public Law 99–420 (16 U.S.C. 341 note) is amended by striking ''$9,100,000'' and inserting ''$28,000,000''.

SEC. 4. INTERMODAL TRANSPORTATION CENTER.

Title I of Public Law 99–420 (16 U.S.C. 341 note) is amended by adding at the end the following new section:

''SEC. 108. INTERMODAL TRANSPORTATION CENTER.

''(a) IN GENERAL.—The Secretary [shall] *may* provide assistance in the planning, construction, and operation of an intermodal transportation center located outside of the boundary of the Park in the town of Trenton, Maine to improve the management, interpretation, and visitor enjoyment of the Park.

''(b) AGREEMENTS.—To carry out subsection (a), in administering the intermodal transportation center, the Secretary may enter into interagency agreements with other Federal agencies, and cooperative agreements, under appropriate terms and conditions, with State and local agencies, and nonprofit organizations—

''(1) to provide exhibits, interpretive services (including employing individuals to provide such services), and technical assistance;

''(2) to conduct activities that facilitate the dissemination of information relating to the Park and the Island Explorer transit system *or any successor transit system*;

''(3) to provide financial assistance for the construction of the intermodal transportation center in exchange for space in the center that is sufficient to interpret the Park; and

''(4) to assist with the operation and maintenance of the intermodal transportation center.

''(c) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this section (including planning, design and construction of the intermodal transportation center).

''(2) OPERATIONS AND MAINTENANCE.—There are authorized to be appropriated such sums as are necessary to maintain and operate the intermodal transportation center.''.

The committee amendments were agreed to.

The bill (S. 1154), as amended, was read the third time and passed, as follows:

S. 1154

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 ''Acadia National Park Improvement Act of 2005''.

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''(1) to provide exhibits, interpretive services (including employing individuals to provide such services), and technical assistance;

''(2) to conduct activities that facilitate the dissemination of information relating to the Park and the Island Explorer transit system or any successor transit system;

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''(c) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this section (including planning, design and construction of the intermodal transportation center).

''(2) OPERATIONS AND MAINTENANCE.—There are authorized to be appropriated such sums as are necessary to maintain and operate the intermodal transportation center.''.

PUBLIC LANDS CORPS HEALTHY FORESTS RESTORATION ACT OF 2005

The Senate proceeded to consider the bill (S. 1238) to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1238

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 ''Public Lands Corps Healthy Forests Restoration Act of 2005''.

SEC. 2. AMENDMENTS TO THE PUBLIC LANDS CORPS ACT OF 1993.

(a) DEFINITIONS.—Section 203 of the Public Lands Corps Act of 1993 (16 U.S.C. 1722) is amended—

(1) by redesignating paragraphs (8), (9), (10), and (11) as paragraphs (9), (10), (11), and (13), respectively;

(2) by inserting after paragraph (7) the following:

''(8) PRIORITY PROJECT.—The term 'priority project' means an appropriate conservation project conducted on eligible service lands to further 1 or more of the purposes of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 et seq.), as follows:

''(A) To reduce wildfire risk to a community, municipal water supply, or other at-risk Federal land.

''(B) To protect a watershed or address a threat to forest and rangeland health, including catastrophic wildfire.

''(C) To address the impact of insect or disease infestations or other damaging agents on forest and rangeland health.

''(D) To protect, restore, or enhance forest ecosystem components to—

''(i) promote the recovery of threatened or endangered species;

''(ii) improve biological diversity; or

''(iii) enhance productivity and carbon sequestration.''; and

(3) by inserting after paragraph (11) (as redesignated by paragraph (1)) the following:

''(12) SECRETARY.—The term 'Secretary' means—

''(A) with respect to National Forest System land, the Secretary of Agriculture; and

''(B) with respect to Indian lands, Hawaiian home lands, or land administered by the Department of the Interior, the Secretary of the Interior.''.

(b) QUALIFIED YOUTH OR CONSERVATION CORPS.—Section 204(c) of the Public Lands Corps Act of 1993 (16 U.S.C. 1723(c)) is amended—

(1) by striking ''The Secretary of the Interior and the Secretary of Agriculture are'' and inserting the following:

''(1) IN GENERAL.—The Secretary is''; and

(2) by adding at the end the following:

''(2) PREFERENCE.—

''(A) IN GENERAL.—For purposes of entering into contracts and cooperative agreements under paragraph (1), the Secretary may give preference to qualified youth or conservation corps located in a specific area that have a substantial portion of members who are economically, physically, or educationally disadvantaged to carry out projects within the area.

''(B) PRIORITY PROJECTS.—In carrying out priority projects in a specific area, the Secretary shall, to the maximum extent practicable, give preference to qualified youth or conservation corps located in that specific area that have a substantial portion of members who are economically, physically, or educationally disadvantaged.''.

(c) CONSERVATION PROJECTS.—Section 204(d) of the Public Lands Corps Act of 1993 (16 U.S.C. 1723(d)) is amended—

(1) in the first sentence—

(A) by striking ''The Secretary of the Interior and the Secretary of Agriculture may each'' and inserting the following:

''(1) IN GENERAL.—The Secretary may''; and

(B) by striking ''such Secretary'' and inserting ''the Secretary'';

(2) in the second sentence, by striking ''Appropriate conservation'' and inserting the following:

''(2) PROJECTS ON INDIAN LANDS.—Appropriate conservation''; and

(3) by striking the third sentence and inserting the following:

''(3) DISASTER PREVENTION OR RELIEF PROJECTS.—The Secretary may authorize appropriate conservation projects and other appropriate projects to be carried out on Federal, State, local, or private land as part of a Federal disaster prevention or relief effort.''.

(d) CONSERVATION CENTERS AND PROGRAM SUPPORT.—Section 205 of the Public Lands Corps Act of 1993 (16 U.S.C. 1724) is amended—

(1) by striking the heading and inserting the following:

''SEC. 205. CONSERVATION CENTERS AND PROGRAM SUPPORT.'';

(2) by striking subsection (a) and inserting the following:

''(a) ESTABLISHMENT AND USE.—

''(1) IN GENERAL.—The Secretary may establish and use conservation centers owned and operated by the Secretary for—

''(A) use by the Public Lands Corps; and

''(B) the conduct of appropriate conservation projects under this title.

''(2) ASSISTANCE FOR CONSERVATION CENTERS.—The Secretary may provide to a conservation center established under paragraph (1) any services, facilities, equipment, and supplies that the Secretary determines to be necessary for the conservation center.

''(3) STANDARDS FOR CONSERVATION CENTERS.—The Secretary shall—

''(A) establish basic standards of health, nutrition, sanitation, and safety for all conservation centers established under paragraph (1); and

''(B) ensure that the standards established under subparagraph (A) are enforced.

''(4) MANAGEMENT.—As the Secretary determines to be appropriate, the Secretary may enter into a contract or other appropriate arrangement with a State or local government agency or private organization to provide for the management of a conservation center.''; and

(3) by adding at the end the following:

''(d) ASSISTANCE.—The Secretary may provide any services, facilities, equipment, supplies, technical assistance, oversight, monitoring, or evaluations that are appropriate to carry out this title.''.

(e) LIVING ALLOWANCES AND TERMS OF SERVICE.—Section 207 of the Public Lands Corps Act of 1993 (16 U.S.C. 1726) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) LIVING ALLOWANCES.—The Secretary shall provide each participant in the Public Lands Corps and each resource assistant with a living allowance in an amount established by the Secretary.''; and

(2) by adding at the end the following:

''(c) HIRING.—The Secretary may—

''(1) grant to a member of the Public Lands Corps credit for time served with the Public Lands Corps, which may be used toward future Federal hiring; and

''(2) provide to a former member of the Public Lands Corps noncompetitive hiring status for a period of not more than 120 days after the date on which the member's service with the Public Lands Corps is complete.''.

(f) FUNDING.—The Public Lands Corps Act of 1993 is amended—

(1) in section 210 (16 U.S.C. 1729), by adding at the end the following:

''(c) OTHER FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under section 211 are in addition to amounts allocated to the Public Lands Corps through other Federal programs or projects.''; and

(2) by inserting after section 210 the following:

''SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $15,000,000 for each fiscal year, of which $10,000,000 is authorized to carry out priority projects.

''(b) DISASTER RELIEF OR PREVENTION PROJECTS.—Notwithstanding subsection (a), any amounts made available under that subsection shall be available for disaster prevention or relief projects.

[(b)] *(c)* AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, amounts appropriated for any fiscal year to carry out this title shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts are appropriated.''.

(g) CONFORMING AMENDMENTS.—The Public Lands Corps Act of 1993 is amended—

(1) in section 204 (16 U.S.C. 1723)—

(A) in subsection (b)—

(i) in the first sentence, by striking ''Secretary of the Interior or the Secretary of Agriculture'' and inserting ''Secretary'';

(ii) in the third sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(iii) in the fourth sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(B) in subsection (e), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary'';

(2) in section 205 (16 U.S.C. 1724)—

(A) in subsection (b), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary''; and

(B) in subsection (c), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary'';

(3) in section 206 (16 U.S.C. 1725)—

(A) in subsection (a)—

(i) in the first sentence—

(I) by striking ''Secretary of the Interior and the Secretary of Agriculture are each'' and inserting ''Secretary is''; and

(II) by striking ''such Secretary'' and inserting ''the Secretary'';

(ii) in the third sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(iii) in the fourth sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(B) in the first sentence of subsection (b), by striking ''Secretary of the Interior or the Secretary of Agriculture'' and inserting ''the Secretary''; and

(4) in section 210 (16 U.S.C. 1729)—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''Secretary of the Interior and the Secretary of Agriculture are each'' and inserting ''Secretary is''; and

(ii) in paragraph (2), by striking ''Secretary of the Interior and the Secretary of Agriculture are each'' and inserting ''Secretary is''; and

(B) in subsection (b), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary''.

The committee amendments were agreed to.

The amendment (No. 2591) was agreed to, as follows:

(Purpose: To modify the authorization of appropriations)

On page 8, line 15, strike ''$15,000,000'' and insert ''$12,000,000''.

On page 8, line 16, strike ''$10,000,000'' and insert ''$8,000,000''.

On page 8, line 17, after ''projects'' insert the following: ''and $4,000,000 of which is authorized to carry out other appropriate conservation projects''.

The bill (S. 1238), as amended, was read the third time and passed, as follows:

S. 1238

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 ''Public Lands Corps Healthy Forests Restoration Act of 2005''.

SEC. 2. AMENDMENTS TO THE PUBLIC LANDS CORPS ACT OF 1993.

(a) DEFINITIONS.—Section 203 of the Public Lands Corps Act of 1993 (16 U.S.C. 1722) is amended—

(1) by redesignating paragraphs (8), (9), (10), and (11) as paragraphs (9), (10), (11), and (13), respectively;

(2) by inserting after paragraph (7) the following:

''(8) PRIORITY PROJECT.—The term 'priority project' means an appropriate conservation project conducted on eligible service lands to further 1 or more of the purposes of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 et seq.), as follows:

''(A) To reduce wildfire risk to a community, municipal water supply, or other at-risk Federal land.

''(B) To protect a watershed or address a threat to forest and rangeland health, including catastrophic wildfire.

''(C) To address the impact of insect or disease infestations or other damaging agents on forest and rangeland health.

''(D) To protect, restore, or enhance forest ecosystem components to—

''(i) promote the recovery of threatened or endangered species;

''(ii) improve biological diversity; or

''(iii) enhance productivity and carbon sequestration.''; and

(3) by inserting after paragraph (11) (as redesignated by paragraph (1)) the following:

''(12) SECRETARY.—The term 'Secretary' means—

''(A) with respect to National Forest System land, the Secretary of Agriculture; and

''(B) with respect to Indian lands, Hawaiian home lands, or land administered by the Department of the Interior, the Secretary of the Interior.''.

(b) QUALIFIED YOUTH OR CONSERVATION CORPS.—Section 204(c) of the Public Lands Corps Act of 1993 (16 U.S.C. 1723(c)) is amended—

(1) by striking ''The Secretary of the Interior and the Secretary of Agriculture are'' and inserting the following:

''(1) IN GENERAL.—The Secretary is''; and

(2) by adding at the end the following:

''(2) PREFERENCE.—

''(A) IN GENERAL.—For purposes of entering into contracts and cooperative agreements under paragraph (1), the Secretary may give preference to qualified youth or conservation corps located in a specific area that have a substantial portion of members who are economically, physically, or educationally disadvantaged to carry out projects within the area.

''(B) PRIORITY PROJECTS.—In carrying out priority projects in a specific area, the Secretary shall, to the maximum extent practicable, give preference to qualified youth or conservation corps located in that specific area that have a substantial portion of members who are economically, physically, or educationally disadvantaged.''.

(c) CONSERVATION PROJECTS.—Section 204(d) of the Public Lands Corps Act of 1993 (16 U.S.C. 1723(d)) is amended—

(1) in the first sentence—

(A) by striking ''The Secretary of the Interior and the Secretary of Agriculture may each'' and inserting the following:

''(1) IN GENERAL.—The Secretary may''; and

(B) by striking ''such Secretary'' and inserting ''the Secretary'';

(2) in the second sentence, by striking ''Appropriate conservation'' and inserting the following:

''(2) PROJECTS ON INDIAN LANDS.—Appropriate conservation''; and

(3) by striking the third sentence and inserting the following:

''(3) DISASTER PREVENTION OR RELIEF PROJECTS.—The Secretary may authorize appropriate conservation projects and other appropriate projects to be carried out on Federal, State, local, or private land as part of a Federal disaster prevention or relief effort.''.

(d) CONSERVATION CENTERS AND PROGRAM SUPPORT.—Section 205 of the Public Lands Corps Act of 1993 (16 U.S.C. 1724) is amended—

(1) by striking the heading and inserting the following:

''SEC. 205. CONSERVATION CENTERS AND PROGRAM SUPPORT.'';

(2) by striking subsection (a) and inserting the following:

''(a) ESTABLISHMENT AND USE.—

''(1) IN GENERAL.—The Secretary may establish and use conservation centers owned and operated by the Secretary for—

''(A) use by the Public Lands Corps; and

''(B) the conduct of appropriate conservation projects under this title.

''(2) ASSISTANCE FOR CONSERVATION CENTERS.—The Secretary may provide to a conservation center established under paragraph (1) any services, facilities, equipment, and supplies that the Secretary determines to be necessary for the conservation center.

''(3) STANDARDS FOR CONSERVATION CENTERS.—The Secretary shall—

''(A) establish basic standards of health, nutrition, sanitation, and safety for all conservation centers established under paragraph (1); and

''(B) ensure that the standards established under subparagraph (A) are enforced.

''(4) MANAGEMENT.—As the Secretary determines to be appropriate, the Secretary may enter into a contract or other appropriate arrangement with a State or local government agency or private organization to provide for the management of a conservation center.''; and

(3) by adding at the end the following:

''(d) ASSISTANCE.—The Secretary may provide any services, facilities, equipment, supplies, technical assistance, oversight, monitoring, or evaluations that are appropriate to carry out this title.''.

(e) LIVING ALLOWANCES AND TERMS OF SERVICE.—Section 207 of the Public Lands Corps Act of 1993 (16 U.S.C. 1726) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) LIVING ALLOWANCES.—The Secretary shall provide each participant in the Public Lands Corps and each resource assistant with a living allowance in an amount established by the Secretary.''; and

(2) by adding at the end the following:

''(c) HIRING.—The Secretary may—

''(1) grant to a member of the Public Lands Corps credit for time served with the Public Lands Corps, which may be used toward future Federal hiring; and

''(2) provide to a former member of the Public Lands Corps noncompetitive hiring status for a period of not more than 120 days after the date on which the member's service with the Public Lands Corps is complete.''.

(f) FUNDING.—The Public Lands Corps Act of 1993 is amended—

(1) in section 210 (16 U.S.C. 1729), by adding at the end the following:

''(c) OTHER FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under section 211 are in addition to amounts allocated to the Public Lands Corps through other Federal programs or projects.''; and

(2) by inserting after section 210 the following:

''SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $12,000,000 for each fiscal year, of which $8,000,000 is authorized to carry out priority projects and $4,000,000 of which is authorized to carry out other appropriate conservation projects.

''(b) DISASTER RELIEF OR PREVENTION PROJECTS.—Notwithstanding subsection (a), any amounts made available under that subsection shall be available for disaster prevention or relief projects.

''*(c)* AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, amounts appropriated for any fiscal year to carry out this title shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts are appropriated.''.

(g) CONFORMING AMENDMENTS.—The Public Lands Corps Act of 1993 is amended—

(1) in section 204 (16 U.S.C. 1723)—

(A) in subsection (b)—

(i) in the first sentence, by striking ''Secretary of the Interior or the Secretary of Agriculture'' and inserting ''Secretary'';

(ii) in the third sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(iii) in the fourth sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(B) in subsection (e), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary'';

(2) in section 205 (16 U.S.C. 1724)—

(A) in subsection (b), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary''; and

(B) in subsection (c), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary'';

(3) in section 206 (16 U.S.C. 1725)—

(A) in subsection (a)—

(i) in the first sentence—

(I) by striking ''Secretary of the Interior and the Secretary of Agriculture are each'' and inserting ''Secretary is''; and

(II) by striking ''such Secretary'' and inserting ''the Secretary'';

(ii) in the third sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(iii) in the fourth sentence, by striking ''Secretaries'' and inserting ''Secretary''; and

(B) in the first sentence of subsection (b), by striking ''Secretary of the Interior or the Secretary of Agriculture'' and inserting ''the Secretary''; and

(4) in section 210 (16 U.S.C. 1729)—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''Secretary of the Interior and the Secretary of Agriculture are each'' and inserting ''Secretary is''; and

(ii) in paragraph (2), by striking ''Secretary of the Interior and the Secretary of Agriculture are each'' and inserting ''Secretary is''; and

(B) in subsection (b), by striking ''Secretary of the Interior and the Secretary of Agriculture'' and inserting ''Secretary''.

DELAWARE NATIONAL COASTAL SPECIAL RESOURCES STUDY ACT

The bill (S. 1627) to authorize the Secretary of the Interior to conduct a special resources study to evaluate resources along the coastal region of the State of Delaware and to determine the suitability and feasibility of establishing a unit of the National Park System in Delaware, was read the third time and passed; as follows:

S. 1627

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 ''Delaware National Coastal Special Resources Study Act''.

SEC. 2. STUDY.

(a) IN GENERAL.—The Secretary of the Interior (referred to in this Act as the ''Secretary'') shall conduct a special resources study of the national significance, suitability, and feasibility of including sites in the coastal region of the State of Delaware in the National Park System.

(b) INCLUSION OF SITES IN THE NATIONAL PARK SYSTEM.—The study under subsection (a) shall include an analysis and any recommendations of the Secretary concerning the suitability and feasibility of designating 1 or more of the sites along the Delaware coast, including Fort Christina, as a unit of the National Park System that relates to the themes described in section 3.

(c) STUDY GUIDELINES.—In conducting the study authorized under subsection (a), the Secretary shall use the criteria for the study of areas for potential inclusion in the National Park System contained in section 8 of Public Law 91–383 (16 U.S.C. 1a–5).

(d) CONSULTATION.—In preparing and conducting the study under subsection (a), the Secretary shall consult with—

(1) the State of Delaware;

(2) the coastal region communities; and

(3) the general public.

SEC. 3. THEMES.

The study authorized under section 2 shall evaluate sites along the coastal region of the State of Delaware that relate to—

(1) the history of indigenous peoples, which would explore the history of Native American tribes of Delaware, such as the Nanticoke and Lenni Lenape;

(2) the colonization and establishment of the frontier, which would chronicle the first European settlers in the Delaware Valley who built fortifications for the protection of settlers, such as Fort Christina;

(3) the founding of a nation, which would document the contributions of Delaware to the development of our constitutional republic;

(4) industrial development, which would investigate the exploitation of water power in Delaware with the mill development on the Brandywine River;

(5) transportation, which would explore how water served as the main transportation link, connecting Colonial Delaware with England, Europe, and other colonies;

(6) coastal defense, which would document the collection of fortifications spaced along the river and bay from Fort Delaware on Pea Patch Island to Fort Miles near Lewes;

(7) the last stop to freedom, which would detail the role Delaware has played in the history of the Underground Railroad network; and

(8) the coastal environment, which would examine natural resources of Delaware that provide resource-based recreational opportunities such as crabbing, fishing, swimming, and boating.

SEC. 4. REPORT.

Not later than 1 year after funds are made available to carry out this Act under section 5, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report containing the findings, conclusions, and recommendations of the study conducted under section 2.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

FREE ROAMING HORSES IN THE CAPE LOOKOUT NATIONAL SEASHORE

The bill (H.R. 126) to amend Public Law 89–366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore, was read the third time and passed.

CARIBBEAN NATIONAL FOREST ACT OF 2005

The bill (H.R. 539) to designate certain National Forest System land in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System, was read the third time and passed.

DEPARTMENT OF THE INTERIOR VOLUNTEER RECRUITMENT ACT OF 2005

The bill (H.R. 584) to authorize the Secretary of the Interior to recruit volunteers to assist with, or facilitate, the activities of various agencies and offices of the Department of the Interior, was read the third time and passed.

ANGEL ISLAND IMMIGRATION STATION RESTORATION AND PRESERVATION ACT

The bill (H.R. 606) to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California, was read the third time and passed.

NATIONAL GEOLOGIC MAPPING REAUTHORIZATION ACT OF 2005

The bill (S. 485) to reauthorize and amend the National Geologic Mapping Act of 1992.

The amendment (No. 2592) was agreed to, as follows:

(Purpose: To extend the authorization of appropriations for the National Geologic Mapping Act of 1992)

On page 7, line 11, strike ''2010'' and insert ''2015''.

The bill (S. 485), as amended, was read the third time and passed, as follows:

S. 485

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 ''National Geologic Mapping Reauthorization Act of 2005''.

SEC. 2. FINDINGS.

Section 2(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31a(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) although significant progress has been made in the production of geologic maps since the establishment of the national cooperative geologic mapping program in 1992, no modern, digital, geologic map exists for approximately 75 percent of the United States;''; and

(2) in paragraph (2)—

(A) in subparagraph (C), by inserting ''homeland and'' after ''planning for'';

(B) in subparagraph (E), by striking ''predicting'' and inserting ''identifying'';

(C) in subparagraph (I), by striking ''and'' after the semicolon at the end;

(D) by redesignating subparagraph (J) as subparagraph (K); and

(E) by inserting after subparagraph (I) the following:

''(J) recreation and public awareness; and''; and

(3) in paragraph (9), by striking ''important'' and inserting ''available''.

SEC. 3. PURPOSE.

Section 2(b) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31a(b)) is amended by inserting ''and management'' before the period at the end.

SEC. 4. DEADLINES FOR ACTIONS BY THE UNITED STATES GEOLOGICAL SURVEY.

Section 4(b)(1) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(b)(1)) is amended in the second sentence—

(1) in subparagraph (A), by striking ''not later than'' and all that follows through the semicolon and inserting ''not later than 1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 2005;'';

(2) in subparagraph (B), by striking ''not later than'' and all that follows through ''in accordance'' and inserting ''not later than 1 year after the date of enactment of the National Geologic Mapping Reauthorization Act of 2005 in accordance''; and

(3) in the matter preceding clause (i) of subparagraph (C), by striking ''not later than'' and all that follows through ''submit'' and inserting ''submit biennially''.

SEC. 5. GEOLOGIC MAPPING PROGRAM OBJECTIVES.

Section 4(c)(2) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(c)(2)) is amended—

(1) by striking ''geophysical-map data base, geochemical-map data base, and a''; and

(2) by striking ''provide'' and inserting ''provides''.

SEC. 6. GEOLOGIC MAPPING PROGRAM COMPONENTS.

Section 4(d)(1)(B)(ii) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31c(d)(1)(B)(ii)) is amended—

(1) in subclause (I), by striking ''and'' after the semicolon at the end;

(2) in subclause (II), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(III) the needs of land management agencies of the Department of the Interior.''.

SEC. 7. GEOLOGIC MAPPING ADVISORY COMMITTEE.

(a) MEMBERSHIP.—Section 5(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(a)) is amended—

(1) in paragraph (2)—

(A) by inserting ''the Secretary of the Interior or a designee from a land management agency of the Department of the Interior,'' after ''Administrator of the Environmental Protection Agency or a designee,'';

(B) by inserting ''and'' after ''Energy or a designee,''; and

(C) by striking '', and the Assistant to the President for Science and Technology or a designee''; and

(2) in paragraph (3)—

(A) by striking ''Not later than'' and all that follows through ''consultation'' and inserting ''In consultation'';

(B) by striking ''Chief Geologist, as Chairman'' and inserting ''Associate Director for Geology, as Chair''; and

(C) by striking ''one representative from the private sector'' and inserting ''2 representatives from the private sector''.

(b) DUTIES.—Section 5(b) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(b)) is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

''(3) provide a scientific overview of geologic maps (including maps of geologic-based hazards) used or disseminated by Federal agencies for regulation or land-use planning; and''.

(c) CONFORMING AMENDMENT.—Section 5(a)(1) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31d(a)(1)) is amended by striking ''10-member'' and inserting ''11-member''.

SEC. 8. FUNCTIONS OF NATIONAL GEOLOGIC-MAP DATABASE.

Section 7(a) of the National Geologic Mapping Act of 1992 (43 U.S.C. 31f(a)) is amended—

(1) in paragraph (1), by striking ''geologic map'' and inserting ''geologic-map''; and

(2) in paragraph (2), by striking subparagraph (A) and inserting the following:

''(A) all maps developed with funding provided by the National Cooperative Geologic Mapping Program, including under the Federal, State, and education components;''.

SEC. 9. BIENNIAL REPORT.

Section 8 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31g) is amended by striking ''Not later'' and all that follows through ''biennially'' and inserting ''Not later than 3 years after the date of enactment of the National Geologic Mapping Reauthorization Act of 2005 and biennially''.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS; ALLOCATION.

Section 9 of the National Geologic Mapping Act of 1992 (43 U.S.C. 31h) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $64,000,000 for each of fiscal years 2006 through 2015.''; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''2000'' and inserting ''2005'';

(B) in paragraph (1), by striking ''48'' and inserting ''50''; and

(C) in paragraph (2), by striking 2 and inserting ''4''.

MORLEY NELSON SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA ACT

The bill (S. 761) to rename the Snake River Birds of Prey National Conservation Area in the State of Idaho as the Morley Nelson Snake River Birds of Prey National Conservation Area in honor of the late Morley Nelson, an international authority on birds of prey, who was instrumental in the establishment of this National Conservation Area, and for other purposes, was read the third time and passed; as follows:

S. 761

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 ''Morley Nelson Snake River Birds of Prey National Conservation Area Act''.

SEC. 2. RENAMING OF SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA.

(a) RENAMING.—Public Law 103–64 is amended—

(1) in section 2(2) (16 U.S.C. 460iii–1(2)), by inserting ''Morley Nelson'' before ''Snake River Birds of Prey National Conservation Area''; and

(2) in section 3(a)(1) (16 U.S.C. 460iii–2(a)(1)), by inserting ''Morley Nelson'' before ''Snake River Birds of Prey National Conservation Area''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Snake River Birds of Prey National Conservation Area shall be deemed to be a reference to the Morley Nelson Snake River Birds of Prey National Conservation Area.

(c) TECHNICAL CORRECTIONS.—Public Law 103–64 is further amended—

(1) in section 3(a)(1) (16 U.S.C. 460iii–2(a)(1)), by striking ''(hereafter referred to as the 'conservation area')''; and

(2) in section 4 (16 U.S.C. 460iii–3)—

(A) in subsection (a)(2), by striking ''Conservation Area'' and inserting ''conservation area''; and

(B) in subsection (d), by striking ''Visitors Center'' and inserting ''visitors center''.

FORT STANTON-SNOWY RIVER NATIONAL CAVE CONSERVATION AREA ACT

The Senate proceeded to consider the bill (S. 1170) to establish the Fort Stanton-Snowy River National Cave Conservation Area, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1170

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 ''Fort Stanton-Snowy River National Cave Conservation Area Act''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Fort Stanton-Snowy River National Cave Conservation Area established by section 3(a).

[(2) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed for the Conservation Area under section 4(c).

[(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

[SEC. 3. ESTABLISHMENT OF FORT STANTON-SNOWY RIVER NATIONAL CAVE CONSERVATION AREA.

[(a) IN GENERAL.—There is established the Fort Stanton-Snowy River National Cave Conservation Area in Lincoln County, New Mexico, to secure, protect, and conserve subterranean natural and unique features and environs for scientific, educational, and other appropriate public uses.

[(b) BOUNDARIES.—The Conservation Area shall include—

[(1) the minimum subsurface area necessary to provide for the Fort Stanton Cave, including the Snowy River passage in its entirety (which may include other significant caves); and

[(2) the minimum surface acreage, as determined by the Secretary, that is necessary to provide access to the cave entrance.

[(c) MAP AND LEGAL DESCRIPTION.—

[(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare a map and legal description of the Conservation Area.

[(2) EFFECT.—The map and legal description of the Conservation Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

[(3) PUBLIC AVAILABILITY.—The map and legal description of the Conservation Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

[SEC. 4. ADMINISTRATION OF CONSERVATION AREA.

[(a) IN GENERAL.—The Secretary shall administer the Conservation Area—

[(1) in accordance with the laws (including regulations) applicable to public land and the management plan required by this Act; and

[(2) in a manner that provides for—

[(A) the conservation and protection of the natural and unique features and environs for scientific, educational, and other appropriate public uses of the Conservation Area;

[(B) public access, as appropriate, while providing for the protection of the cave resources and for public safety;

[(C) the continuation of other existing uses and new uses of the Conservation Area that do not substantially impair the purposes for which the Conservation Area is established;

[(D) the protection of new caves within the Conservation Area, such as the Snowy River passage within Fort Stanton Cave;

[(E) the continuation of such uses on the surface acreage as exist under management action in place prior to designation of the Conservation Area by this Act; and

[(F) scientific investigation and research opportunities within the Conservation Area, including through partnerships with colleges, universities, schools, scientific institutions, researchers, and scientists to conduct research and provide educational and interpretive services within the Conservation Area.

[(b) WITHDRAWALS.—Subject to valid existing rights, all Federal surface and subsurface land within the Conservation Area and all land and interests in the surface and subsurface land that are acquired by the United States after the date of enactment of this Act for inclusion in the Conservation Area, are withdrawn from—

[(1) all forms of entry, appropriation, or disposal under the general land laws;

[(2) location, entry, and patent under the mining laws; and

[(3) operation under the mineral leasing and geothermal leasing laws.

[(c) MANAGEMENT PLAN.—

[(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the Conservation Area.

[(2) PURPOSES.—The management plan shall—

[(A) describe the appropriate uses and management of the Conservation Area;

[(B) incorporate, as appropriate, decisions contained in any other management or activity plan for the land within or adjacent to the Conservation Area;

[(C) take into consideration any information developed in studies of the land and resources within or adjacent to the Conservation Area; and

[(D) engage in a cooperative agreement with Lincoln County, New Mexico, to address the historical involvement of the local community in the interpretation and protection of the resources of the Conservation Area.

[(d) ACTIVITIES OUTSIDE CONSERVATION AREA.—

[(1) IN GENERAL.—The fact that an activity or use is not permitted inside the Conservation Area shall not preclude—

[(A) the conduct of the activity on land, or the use of land for the activity, outside the boundary of the Conservation Area, consistent with other applicable laws (including regulations); or

[(B) any activity or use, including new uses, on the surface land above the Conservation Area or on any land appurtenant to that surface land.

[(2) MANAGEMENT.—The surface land described in paragraph (1)(B) shall continue to be managed for multiple uses in accordance with all applicable laws (including regulations).

[(e) RESEARCH AND INTERPRETIVE FACILITIES.—

[(1) IN GENERAL.—The Secretary may establish facilities for—

[(A) the conduct of scientific research; and

[(B) the interpretation of the historical, cultural, scientific, archaeological, natural, and educational resources of the Conservation Area.

[(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the State of New Mexico and other institutions and organizations to carry out the purposes of this Act.

[(f) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation of any water right.

[SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Stanton-Snowy River National Cave Conservation Area Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Fort Stanton-Snowy River National Cave Conservation Area established by section 3(a).

(2) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed for the Conservation Area under section 4(c).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 3. ESTABLISHMENT OF FORT STANTON-SNOWY RIVER NATIONAL CAVE CONSERVATION AREA.

(a) IN GENERAL.—There is established the Fort Stanton-Snowy River National Cave Conservation Area in Lincoln County, New Mexico, to secure, protect, and conserve subterranean natural and unique features and environs for scientific, educational, and other appropriate public uses.

(b) BOUNDARIES.—The Conservation Area shall include—

(1) the minimum subsurface area necessary to encompass the ''Ft. Stanton Cave'' and the ''Newly Discovered Cave'', as depicted on the map entitled ''Fort Stanton Cave'' and dated March 29, 2005; and

(2) the minimum surface acreage, as determined by the Secretary, that is necessary to provide access to the cave entrance, but not to exceed 40 acres.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall establish detailed boundaries and prepare a map and legal description of the Conservation Area that depicts the minimum acreage necessary to encompass the land described in subsection (b), based on the smallest legal subdivision described in not less than 40 acre aliquot parts.

(2) EFFECT.—The map and legal description of the Conservation Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description of the Conservation Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 4. MANAGEMENT OF THE CONSERVATION AREA.

(a) IN GENERAL.—The Secretary shall administer the Conservation Area—

(1) in accordance with the laws (including regulations) applicable to public land and the management plan required by this Act; and

(2) in a manner that provides for—

(A) the conservation and protection of the natural and unique features and environs for scientific, educational, and other appropriate public uses of the Conservation Area;

(B) public access, as appropriate, while providing for the protection of the cave resources and for public safety;

(C) the continuation of other existing uses and new uses of the Conservation Area that do

not substantially impair the purposes for which the Conservation Area is established;

(D) management of the surface area overlying the Conservation Area in accordance with the Fort Stanton Area of Critical Environmental Concern Final Activity Plan dated March, 2001; and

(E) scientific investigation and research opportunities within the Conservation Area, including through partnerships with colleges, universities, schools, scientific institutions, researchers, and scientists to conduct research and provide educational and interpretive services within the Conservation Area.

(b) WITHDRAWALS.—Subject to valid existing rights, all Federal surface and subsurface land within the Conservation Area and all land and interests in the surface and subsurface land that are acquired by the United States after the date of enactment of this Act for inclusion in the Conservation Area, are withdrawn from—

(1) all forms of entry, appropriation, or disposal under the general land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation under the mineral leasing and geothermal leasing laws.

(c) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the Conservation Area.

(2) PURPOSES.—The management plan shall—

(A) describe the appropriate uses and management of the Conservation Area;

(B) incorporate, as appropriate, decisions contained in any other management or activity plan for the land within or adjacent to the Conservation Area;

(C) take into consideration any information developed in studies of the land and resources within or adjacent to the Conservation Area; and

(D) provide for a cooperative agreement with Lincoln County, New Mexico, to address the historical involvement of the local community in the interpretation and protection of the resources of the Conservation Area.

(d) ACTIVITIES OUTSIDE CONSERVATION AREA.—The establishment of the Conservation Area shall not—

(1) create a protective perimeter or buffer zone around the Conservation Area; or

(2) preclude uses or activities outside the Conservation Area that are permitted under other applicable laws, even if the uses or activities are prohibited within the Conservation Area.

(e) RESEARCH AND INTERPRETIVE FACILITIES.—

(1) IN GENERAL.—The Secretary may establish facilities for—

(A) the conduct of scientific research; and

(B) the interpretation of the historical, cultural, scientific, archaeological, natural, and educational resources of the Conservation Area.

(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the State of New Mexico and other institutions and organizations to carry out the purposes of this Act.

(f) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation of any water right.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The amendment (No. 2593) was agreed to, as follows:

(Purpose: To provide a complete substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fort Stanton-Snowy River Cave National Conservation Area Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Fort Stanton-Snowy River Cave National Conservation Area established by section 3(a).

(2) MANAGEMENT PLAN.—The term ''management plan'' means the management plan developed for the Conservation Area under section 4(c).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

SEC. 3. ESTABLISHMENT OF FORT STANTON-SNOWY RIVER CAVE NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT; PURPOSES.—There is established the Fort Stanton–Snowy River Cave National Conservation Area in Lincoln County, New Mexico, to protect, conserve, and enhance the unique and nationally important historic, cultural, scientific, archaeological, natural, and educational subterranean cave resources of the Fort Stanton–Snowy River cave system.

(b) AREA INCLUDED.—The Conservation Area shall include the area within the boundaries depicted on the map entitled ''Fort Stanton–Snowy River Cave National Conservation Area'' and dated November 2005.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall submit to Congress a map and legal description of the Conservation Area.

(2) EFFECT.—The map and legal description of the Conservation Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description of the Conservation Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 4. MANAGEMENT OF THE CONSERVATION AREA.

(a) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Conservation Area—

(A) in a manner that conserves, protects, and enhances the resources and values of the Conservation Area, including the resources and values described in section 3(a); and

(B) in accordance with—

(i) this Act;

(ii) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(iii) any other applicable laws.

(2) USES.—The Secretary shall only allow uses of the Conservation Area that are consistent with the protection of the cave resources.

(3) REQUIREMENTS.—In administering the Conservation Area, the Secretary shall provide for—

(A) the conservation and protection of the natural and unique features and environs for scientific, educational, and other appropriate public uses of the Conservation Area;

(B) public access, as appropriate, while providing for the protection of the cave resources and for public safety;

(C) the continuation of other existing uses or other new uses of the Conservation Area that do not impair the purposes for which the Conservation Area is established;

(D) management of the surface area of the Conservation Area in accordance with the Fort Stanton Area of Critical Environmental Concern Final Activity Plan dated March, 2001, or any amendments to the plan, consistent with this Act; and

(E) scientific investigation and research opportunities within the Conservation Area, including through partnerships with colleges, universities, schools, scientific institutions, researchers, and scientists to conduct research and provide educational and interpretive services within the Conservation Area.

(b) WITHDRAWALS.—Subject to valid existing rights, all Federal surface and subsurface land within the Conservation Area and all land and interests in the land that are acquired by the United States after the date of enactment of this Act for inclusion in the Conservation Area, are withdrawn from—

(1) all forms of entry, appropriation, or disposal under the general land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation under the mineral leasing and geothermal leasing laws.

(c) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the Conservation Area.

(2) PURPOSES.—The management plan shall—

(A) describe the appropriate uses and management of the Conservation Area;

(B) incorporate, as appropriate, decisions contained in any other management or activity plan for the land within or adjacent to the Conservation Area;

(C) take into consideration any information developed in studies of the land and resources within or adjacent to the Conservation Area; and

(D) provide for a cooperative agreement with Lincoln County, New Mexico, to address the historical involvement of the local community in the interpretation and protection of the resources of the Conservation Area.

(d) ACTIVITIES OUTSIDE CONSERVATION AREA.—The establishment of the Conservation Area shall not—

(1) create a protective perimeter or buffer zone around the Conservation Area; or

(2) preclude uses or activities outside the Conservation Area that are permitted under other applicable laws, even if the uses or activities are prohibited within the Conservation Area.

(e) RESEARCH AND INTERPRETIVE FACILITIES.—

(1) IN GENERAL.—The Secretary may establish facilities for—

(A) the conduct of scientific research; and

(B) the interpretation of the historical, cultural, scientific, archaeological, natural, and educational resources of the Conservation Area.

(2) COOPERATIVE AGREEMENTS.—The Secretary may, in a manner consistent with this Act, enter into cooperative agreements with the State of New Mexico and other institutions and organizations to carry out the purposes of this Act.

(f) WATER RIGHTS.—Nothing in this Act constitutes an express or implied reservation of any water right.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The amendment (No. 2594) was agreed to, as follows:

Amend the title so as to read: ''To establish the Fort Stanton-Snowy River Cave National Conservation Area''.

The bill (S. 1170), as amended, was read the third time and passed.

DESCHUTES RIVER CONSERVANCY REAUTHORIZATION ACT OF 2005

The bill (S. 166) to amend the Oregon Resource Conservation Act of 1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes, was read the third time and passed; as follows:

S. 166

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 ''Deschutes River Conservancy Reauthorization Act of 2005''.

SEC. 2. EXTENSION OF PARTICIPATION OF BUREAU OF RECLAMATION IN DESCHUTES RIVER CONSERVANCY.

Section 301 of the Oregon Resource Conservation Act of 1996 (division B of Public Law 104–208; 110 Stat. 3009–534) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''Deschutes River Basin Working Group'' and inserting ''Deschutes River Conservancy Working Group''; and

(B) by striking paragraph (5) and inserting the following:

''(5) QUORUM.—The term 'quorum' means 8 of those qualified Working Group members appointed and eligible to serve.'';

(2) in subsection (b)(3), by inserting before the period at the end the following: '', and up to a total amount of $2,000,000 during each of fiscal years 2006 through 2015''; and

(3) in subsection (h), by inserting before the period at the end the following: '', and $2,000,000 for each of fiscal years 2006 through 2015''.

LITTLE BUTTE/BEAR CREEK SUB-BASINS WATER FEASIBILITY ACT

The Senate proceeded to consider the bill (S. 251) to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a water resource feasibility study for the Little Butte/Bear Creek Sub-basins in Oregon, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 251

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

SECTION 1. LITTLE BUTTE/BEAR CREEK SUB-BASINS, OREGON, WATER RESOURCE STUDY.

(a) SHORT TITLE.—This section may be cited as the ''Little Butte/Bear Creek Subbasins Water Feasibility Act''.

(b) AUTHORIZATION.—The Secretary of the Interior, acting through the Bureau of Reclamation, may [conduct] participate in the Water for Irrigation, Streams and the Economy Project water management feasibility study and environmental impact statement in accordance with the ''Memorandum of Agreement Between City of Medford and Bureau of Reclamation for the Water for Irrigation, Streams, and the Economy Project'', dated July 2, 2004.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $500,000 to carry out this section.]

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Bureau of Reclamation $500,000 to carry out activities under this Act.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The non-Federal share shall be 50 percent of the total costs of the Bureau of Reclamation in carrying out subsection (b).

(B) FORM.—The non-Federal share required under subparagraph (A) may be in the form of any in-kind services that the Secretary of the Interior determines would contribute substantially toward the conduct and completion of the study and environmental impact statement required under subsection (b).

The committee amendments were agreed to.

The bill (S. 251), as amended, was read the third time and passed, as follows:

S. 251

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

SECTION 1. LITTLE BUTTE/BEAR CREEK SUB-BASINS, OREGON, WATER RESOURCE STUDY.

(a) SHORT TITLE.—This section may be cited as the ''Little Butte/Bear Creek Subbasins Water Feasibility Act''.

(b) AUTHORIZATION.—The Secretary of the Interior, acting through the Bureau of Reclamation, may participate in the Water for Irrigation, Streams and the Economy Project water management feasibility study and environmental impact statement in accordance with the ''Memorandum of Agreement Between City of Medford and Bureau of Reclamation for the Water for Irrigation, Streams, and the Economy Project'', dated July 2, 2004.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $500,000 to carry out this section.

(1) IN GENERAL.—There is authorized to be appropriated to the Bureau of Reclamation $500,000 to carry out activities under this Act.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The non-Federal share shall be 50 percent of the total costs of the Bureau of Reclamation in carrying out subsection (b).

(B) FORM.—The non-Federal share required under subparagraph (A) may be in the form of any in-kind services that the Secretary of the Interior determines would contribute substantially toward the conduct and completion of the study and environmental impact statement required under subsection (b).

RIO ARRIBA COUNTY LAND CONVEYANCE ACT

The Senate proceeded to consider the bill (S. 213) to direct the Secretary of the Interior to convey certain Federal land to Rio Arriba County, New Mexico, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 213

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 ''Rio Arriba County Land Conveyance Act''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) COUNTY.—The term ''County'' means the County of Rio Arriba, New Mexico.

[(2) MAP.—The term ''map'' means the map entitled ''Alcalde Proposed Land Transfer'' and dated September 23, 2004.

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

[SEC. 3. CONVEYANCE OF LAND TO RIO ARRIBA COUNTY, NEW MEXICO.

[(a) IN GENERAL.—Subject to subsection (c), not later than 1 year after the date of enactment of this Act, the Secretary shall convey to the County, all right, title, and interest of the United States in and to the land (including any improvements to the land) described in subsection (b).

[(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 150.86 acres of land located on the Sebastian Martin Land Grant in the vicinity of Alcalde, Rio Arriba County, New Mexico, as depicted on the map.

[(c) CONDITIONS.—

[(1) IN GENERAL.—The land conveyed under subsection (a) shall be treated as public land for the purposes of the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.)

[(2) CONSIDERATION.—The amount of consideration for the conveyance of land under subsection (a) shall be determined by the Secretary consistent with section 2(a) of the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869–1(a)).

[(3) AGREEMENT.—Before conveying the land under subsection (a), the Secretary shall enter into an agreement with the County that indemnifies the United States from all liability of the United States arising from the land conveyed.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rio Arriba County Land Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COUNTY.—The term ''County'' means the County of Rio Arriba, New Mexico.

(2) MAP.—The term ''map'' means the map entitled ''Alcalde Proposed Land Transfer'' and dated September 23, 2004.

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

SEC. 3. CONVEYANCE OF LAND TO RIO ARRIBA COUNTY, NEW MEXICO.

(a) IN GENERAL.—Subject to valid existing rights, the Secretary shall convey to the County, without consideration, all right, title, and interest of the United States in and to the land (including any improvements to the land) described in subsection (b).

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 171 acres of land located on the Sebastian Martin Land Grant in the vicinity of Alcalde, Rio Arriba County, New Mexico, as depicted on the map.

(c) REVERSION.—If any portion of the land conveyed under subsection (a) ceases to be used for public purposes the land shall, at the option of the Secretary, revert to the United States.

(d) CONDITIONS ON SALES.—If the County sells any portion of the land conveyed to the County under subsection (a)—

(1) the amount of consideration for the sale shall reflect fair market value, as determined by an appraisal; and

(2) the County shall pay to the Secretary an amount equal to the gross proceeds of the sale, for use by the Director of the Bureau of Land Management in the State of New Mexico, without further appropriation.

(e) COSTS.—The County shall pay any costs associated with the conveyance of land under subsection (a).

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 213), as amended, was read the third time and passed.

GLENDO UNIT OF THE MISSOURI RIVER BASIN PROJECT CONTRACT EXTENSION ACT OF 2005

The Senate proceeded to consider the bill (S. 592) to amend the Irrigation Project Contract Extension Act of 1998 to extend certain contracts between the Bureau of Reclamation and certain irrigation water contractors in the States of Wyoming and Nebraska, which had been reported from the Committee on Energy and Natural Resources, with an amendment.

The bill (S. 592) was passed.

The amendment to the title was agreed to.

S. 592

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 ''Glendo Unit of the Missouri River Basin Project Contract Extension Act of 2005''.

SEC. 2. GLENDO UNIT OF THE MISSOURI RIVER BASIN CONTRACT EXTENSION.

Section 2 of the Irrigation Project Contract Extension Act of 1998 (112 Stat. 2816, 117 Stat. 1854) is amended—

(1) in subsection (a), by striking ''December 31, 2005'' and inserting ''December 31, 2007''; and

(2) in subsection (b)—

(A) by striking ''beyond December 31, 2005'' and inserting ''beyond December 31, 2007''; and

(B) by striking ''before December 31, 2005'' and inserting ''before December 31, 2007''.

Amend the title so as to read: ''To amend the Irrigation Project Contract Extension Act of 1998 to extend certain contracts between the Bureau of Reclamation and certain irrigation water contractors in the States of Wyoming and Nebraska.''.

PACTOLA RESERVOIR REALLOCATION AUTHORIZATION ACT OF 2005

The bill (S. 819) to authorize the Secretary of the Interior to reallocate costs of the Pactola Dam and Reservoir, South Dakota, to reflect increased demands for municipal, industrial, and fish and wildlife purposes, was read the third time and passed; as follows:

S. 819

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 ''Pactola Reservoir Reallocation Authorization Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is appropriate to reallocate the costs of the Pactola Dam and Reservoir, South Dakota, to reflect increased demands for municipal, industrial, and fish and wildlife purposes; and

(2) section 302 of the Department of Energy Organization Act (42 U.S.C. 7152) prohibits such a reallocation of costs without congressional approval.

SEC. 3. REALLOCATION OF COSTS OF PACTOLA DAM AND RESERVOIR, SOUTH DAKOTA.

The Secretary of the Interior may, as provided in the contract of August 2001 entered into between Rapid City, South Dakota, and the Rapid Valley Conservancy District, reallocate, in a manner consistent with Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), the construction costs of Pactola Dam and Reservoir, Rapid Valley Unit, Pick-Sloan Missouri Basin Program, South Dakota, from irrigation purposes to municipal, industrial, and fish and wildlife purposes.

EXTENSION OF A WATER SERVICE CONTRACT

The bill (S. 891) to extend the water service contract for the Ainsworth Unit, Sandhills Division, Pick-Sloan Missouri Basin Program, Nebraska, was read the third time and passed, as follows:

S. 891

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

SECTION 1. AINSWORTH UNIT, SANDHILLS DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM.

(a) IN GENERAL.—The Secretary of the Interior shall extend for the period described in subsection (b) the water service contract for the Ainsworth unit, Sandhills Division, Pick-Sloan Missouri Basin Program, Nebraska, consisting of—

(1) the water service contract entered into by the Secretary of the Interior under—

(A) section 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e));

(B) section 9(c) of the Act of December 22, 1944 (58 Stat. 887, chapter 665);

(C) the Act of August 21, 1954 (68 Stat. 757, chapter 781); and

(D) the Act of May 18, 1956 (70 Stat. 160, chapter 285); and

(2) the water service contract for the set project located in Cherry, Brown, and Rock Counties, Nebraska, for the use of a part of the waters of the Snake River, a tributary of the Niobrara River.

(b) PERIOD OF EXTENSION.—The water service contract described in subsection (a) shall be extended for 4 years after the date on which the contract expires under the water service contract and law in existence before the date of enactment of this Act.

ALASKA WATER RESOURCES ACT OF 2005

The Senate proceeded to consider the bill (S. 1338) to require the Secretary of the Interior, acting through the Bureau of Reclamation and the United States Geological Survey, to conduct a study on groundwater resources in the State of Alaska, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 1338

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 ''Alaska Water Resources Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) STATE.—The term ''State'' means the State of Alaska.

SEC. 3. ALASKA WATER RESOURCES STUDY.

(a) STUDY.—The Secretary, acting through the Commissioner of Reclamation and the Director of the United States Geological Survey, where appropriate, and in accordance with this Act and other applicable provisions of law, shall conduct a study that includes—

(1) a survey of accessible water supplies, including aquifers, on the Kenai Peninsula, [in the Municipality of Anchorage and the Matanuska-Susitna Borough] *and in the Municipality of Anchorage, the Matanuska-Susitna Borough, the city of Fairbanks, and the Fairbanks Northstar Borough*;

(2) a survey of water treatment needs and technologies, including desalination, applicable to the water resources of the State; and

(3) a review of the need for enhancement of the streamflow information collected by the United States Geological Survey in the State relating to critical water needs in areas such as—

(A) infrastructure risks to State transportation,

(B) flood forecasting,

(C) resource extraction; and

(D) fire management.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report describing the results of the study required by subsection (a).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendments were agreed to.

The bill (S. 1338), as amended, was read the third time and passed, as follows:

S. 1338

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 ''Alaska Water Resources Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) STATE.—The term ''State'' means the State of Alaska.

SEC. 3. ALASKA WATER RESOURCES STUDY.

(a) STUDY.—The Secretary, acting through the Commissioner of Reclamation and the Director of the United States Geological Survey, where appropriate, and in accordance with this Act and other applicable provisions of law, shall conduct a study that includes—

(1) a survey of accessible water supplies, including aquifers, on the Kenai Peninsula, in the Municipality of Anchorage and the Matanuska-Susitna Borough and in the Municipality of Anchorage, the Matanuska-Susitna Borough, the city of Fairbanks, and the Fairbanks Northstar Borough;

(2) a survey of water treatment needs and technologies, including desalination, applicable to the water resources of the State; and

(3) a review of the need for enhancement of the streamflow information collected by the United States Geological Survey in the State relating to critical water needs in areas such as—

(A) infrastructure risks to State transportation,

(B) flood forecasting,

(C) resource extraction; and

(D) fire management.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report describing the results of the study required by subsection (a).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

CATOCTIN MOUNTAIN NATIONAL RECREATION AREA DESIGNATION ACT

The Senate proceeded to consider the bill (S. 777) to designate Catoctin Mountain Park in the State of Maryland as the "Catoctin Mountain National Recreation Area", and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 777

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 "Catoctin Mountain National Recreation Area Designation Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Catoctin Recreation Demonstration Area, in Frederick County, Maryland—

(A) was established in 1933; and

(B) was transferred to the National Park Service by executive order in 1936;

(2) in 1942, the presidential retreat known as "Camp David" was established in the Catoctin Recreation Demonstration Area;

(3) [in 1952, approximately 5,000] *in 1954, approximately 4,400* acres of land in the Catoctin Recreation Demonstration Area was transferred to the State of Maryland and designated as Cunningham Falls State Park;

(4) in 1954, the Catoctin Recreation Demonstration Area was renamed "Catoctin Mountain Park";

(5) the proximity of Catoctin Mountain Park, Camp David, and Cunningham Falls State Park and the difference between management of the parks by the Federal and State government has caused longstanding confusion to visitors to the parks;

(6) Catoctin Mountain Park is 1 of 17 units in the National Park System and 1 of 9 units in the National Capital Region that does not have the word "National" in the title; and

(7) the history, uses, and resources of Catoctin Mountain Park make the park appropriate for designation as a national recreation area.

(b) PURPOSE.—It is the purpose of this Act to designate Catoctin Mountain Park as a national recreation area to—

(1) clearly identify the park as a unit of the National Park System; and

(2) distinguish the park from Cunningham Falls State Park.

SEC. 3. DEFINITIONS.

(a) MAP.—The term "map" means the map entitled "Catoctin Mountain National Recreation Area", numbered [841/80444, and dated August 14, 2002] *841/80444B and dated April 2005*.

(b) RECREATION AREA.—The term "recreation area" means the Catoctin Mountain National Recreation Area designated by section 4(a).

(c) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4. CATOCTIN MOUNTAIN NATIONAL RECREATION AREA.

(a) DESIGNATION.—Catoctin Mountain Park in the State of Maryland shall be known and designated as the "Catoctin Mountain National Recreation Area".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to Catoctin Mountain Park shall be deemed to be a reference to the Catoctin Mountain National Recreation Area.

(c) BOUNDARY.—

(1) IN GENERAL.—The recreation area shall consist of land within the boundary depicted on the map.

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

(3) ADJUSTMENTS.—The Secretary may make minor adjustments in the boundary of the recreation area consistent with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–9(c)).

(d) ACQUISITION AUTHORITY.—The Secretary may acquire any land, interest in land, or improvement to land within the boundary of the recreation area by donation, purchase with donated or appropriated funds, or exchange.

(e) ADMINISTRATION.—The Secretary shall administer the recreation area—

(1) in accordance with this Act and the laws generally applicable to units of the National Park System, including—

(A) the Act of August 25, 1916 (16 U.S.C. 1 et seq.); and

(B) the Act of August 21, 1935 (16 U.S.C. 461 et seq.); and

(2) in a manner that protects and enhances the scenic, natural, cultural, historical, and recreational resources of the recreation area.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendments were agreed to.

The bill (S. 777), as amended, was read the third time and passed, as follows:

S. 777

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 "Catoctin Mountain National Recreation Area Designation Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Catoctin Recreation Demonstration Area, in Frederick County, Maryland—

(A) was established in 1933; and

(B) was transferred to the National Park Service by executive order in 1936;

(2) in 1942, the presidential retreat known as "Camp David" was established in the Catoctin Recreation Demonstration Area;

(3) in 1954, approximately 4,400 acres of land in the Catoctin Recreation Demonstration Area was transferred to the State of Maryland and designated as Cunningham Falls State Park;

(4) in 1954, the Catoctin Recreation Demonstration Area was renamed "Catoctin Mountain Park";

(5) the proximity of Catoctin Mountain Park, Camp David, and Cunningham Falls State Park and the difference between management of the parks by the Federal and State government has caused longstanding confusion to visitors to the parks;

(6) Catoctin Mountain Park is 1 of 17 units in the National Park System and 1 of 9 units in the National Capital Region that does not have the word "National" in the title; and

(7) the history, uses, and resources of Catoctin Mountain Park make the park appropriate for designation as a national recreation area.

(b) PURPOSE.—It is the purpose of this Act to designate Catoctin Mountain Park as a national recreation area to—

(1) clearly identify the park as a unit of the National Park System; and

(2) distinguish the park from Cunningham Falls State Park.

SEC. 3. DEFINITIONS.

(a) MAP.—The term "map" means the map entitled "Catoctin Mountain National Recreation Area", numbered 841/80444B and dated April 2005.

(b) RECREATION AREA.—The term "recreation area" means the Catoctin Mountain National Recreation Area designated by section 4(a).

(c) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4. CATOCTIN MOUNTAIN NATIONAL RECREATION AREA.

(a) DESIGNATION.—Catoctin Mountain Park in the State of Maryland shall be known and designated as the "Catoctin Mountain National Recreation Area".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to Catoctin Mountain Park shall be deemed to be a reference to the Catoctin Mountain National Recreation Area.

(c) BOUNDARY.—

(1) IN GENERAL.—The recreation area shall consist of land within the boundary depicted on the map.

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

(3) ADJUSTMENTS.—The Secretary may make minor adjustments in the boundary of the recreation area consistent with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(c)).

(d) ACQUISITION AUTHORITY.—The Secretary may acquire any land, interest in land, or improvement to land within the boundary of the recreation area by donation, purchase with donated or appropriated funds, or exchange.

(e) ADMINISTRATION.—The Secretary shall administer the recreation area—

(1) in accordance with this Act and the laws generally applicable to units of the National Park System, including—

(A) the Act of August 25, 1916 (16 U.S.C. 1 et seq.); and

(B) the Act of August 21, 1935 (16 U.S.C. 461 et seq.); and

(2) in a manner that protects and enhances the scenic, natural, cultural, historical, and recreational resources of the recreation area.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

REVOCATION OF A PUBLIC LAND ORDER

The bill (H.R. 1101) to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California, was read the third time and passed.

NEW SHIPPER REVIEW AMENDMENT ACT OF 2005

Mr. McCONNELL. I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 695, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 695) to suspend temporarily new shipper bonding privileges.

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

Mr. McCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that statements related to the measure be printed in the RECORD.

The bill (S. 695) was read a third time, and passed, as follows:

S. 695

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 ''New Shipper Review Amendment Act of 2005''.

SEC. 2. TEMPORARY SUSPENSION OF NEW SHIPPER BONDING PRIVILEGES.

Clause (iii) of section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)(iii)) shall not be effective during the 3-year period beginning on the date of the enactment of this Act.

SEC. 3. REPORT TO CONGRESS.

Not later than 2 years after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of the Treasury, the United States Trade Representative, and the Commissioner of Customs and Border Protection, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing—

(1) recommendations on whether the suspension of the effectiveness of section 751(a)(2)(B)(iii) of the Tariff Act of 1930 should be extended beyond the date provided in section 2 of this Act; and

(2) assessments of the effectiveness of any administrative measures that have been implemented to address the difficulties giving rise to section 2 of this Act, including—

(A) problems in assuring the collection of antidumping duties on imports from new shippers;

(B) administrative burdens imposed on the Department of Commerce by new shipper reviews; and

(C) the use of the bonding privilege by importers from new shippers to circumvent the effect of antidumping duty orders.

Mr. McCONNELL. Mr. President, I further ask unanimous consent that the bill be held at the desk.

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

SENATOR PAUL SIMON WATER FOR THE POOR ACT OF 2005

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1973, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1973) to make access to safe water and sanitation for developing countries a specific policy objective of the United States foreign assistance programs, and for other purposes.

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

Mr. McCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 1973) was read the third time and passed.

REGARDING OVERSIGHT OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 317, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 317) expressing the sense of the Senate regarding oversight of the Internet Corporation for Assigned Names and Numbers.

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

Mr. LEAHY. Mr. President, today at the World Summit on the Information Society, an agreement was announced to maintain the current structure for managing the Internet. This agreement marks a critical step toward ensuring the stability and security of the Internet and preserving its benefits not only for the United States, but for countries across the globe.

In late October I joined with the other cochairs of the Internet Caucus in a letter to the White House urging the administration to stand firm in its position to protect the Internet and resist efforts to undo the structure that has worked so well so far. I also joined Senator BURNS in offering a resolution to maintain the currently effective status quo on Internet governance. The agreement that now has been reached in Tunis to maintain the current structure for managing domain names and the Internet is consistent with our efforts.

The value of the Internet is incalculable. The Internet has brought an unprecedented level of commercial exchanges in both the consumer and business-to-business realms. It has spawned and prompted the development of new ideas, businesses and relationships. It has empowered people who have never had access to power and otherwise would likely never have an opportunity to be heard, much less challenge or influence public policy and institutional power. It has introduced and cemented friendships across the globe, and it has distributed information and fostered greater understanding and awareness of others' ideas and others' cultures. Becoming part of a global Internet environment has also shown us we are part of the wider world in which all of us live. It is values like these that no doubt our world partners are seeking to preserve in their proposals, yet would unwittingly undermine.

The United States developed and nourished the Internet. The open economy and constitutional liberties that are the foundations of our Nation allowed us the privilege and extraordinary responsibility to serve as the great incubator that has unleashed these spectacular developments and benefits.

No doubt we can do even better. Some have benefited substantially more than others. We have further strides to make before eradicating the digital divide and narrowing the gaps between the haves and have-nots. We also need to be vigilant in maintaining the essential freedom and influences that have kept the Internet flourishing. We should work closely with other countries to address challenges and concerns as they arise. By proceeding prudently and knowledgeably, taking care not to jeopardize the innovations and openness that have allowed the Internet to thrive, we can foster progress and continue to enjoy the benefits the Internet continues to bring to the world.

I ask unanimous consent that a copy of the letter from the Internet Caucus cochairs to the White House and today's Associated Press article ''Deal Reached on Managing the Internet'' be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, October 24, 2005.

Hon. GEORGE W. BUSH,
The President of the United States, The White House, Washington, DC.

DEAR PRESIDENT BUSH: As co-chairs of the Congressional Internet Caucus, we are writing to applaud your position that governance of the Internet should not be transferred to an international government organization and to urge you to communicate this position to the international community during the upcoming World Summit on the Information Society (WSIS) in Tunisia.

As you know, the Internet's domain name system (DNS) is administered by the Internet Corporation for Assigned Names and Numbers (ICANN), a private, nonprofit organization based in the United States that works closely with the U.S. Department of Commerce. We believe that this privately-operated approach fosters market principles and is the most efficient way to administer the DNS. The greater the government involvement in running the Internet's day-to-day operations, the more likely that red tape and overly burdensome regulations will result.

However, the U.N., with the support of countries including China, Iran, and Cuba, released a report earlier this year which included proposals to take control of administration of the Internet from the U.S.-based ICANN and give it to a bureaucratic U.N. body. Recently, the EU has signaled that it would also support having an international body oversee the Internet. We believe that it is unacceptable for the U.N. to administer the Internet, and are extremely concerned that the EU would move toward this position.

The United States is uniquely positioned to protect the fundamental principles of free press and free speech upon which the Internet has thrived. The U.S. Constitution guarantees that basic rights, and to cede control of the Internet to countries with at best questionable records regarding these rights could jeopardize the continued success of the Internet and lead to significant restrictions on access to the Internet's wealth of information.

With the WSIS convening next month in Tunisia, we urge you to continue to take a strong stand for the principles that have guided the administration of the Internet to date and fostered the phenomenal growth of the Internet: ftee market principles, the freedoms of speech and the press, and limited bureaucratic involvement.

Thank you again for your work to ensure the freedom and effective administration of the Internet. We look forward to continuing to work with you on this important issue.

Sincerely,

BOB GOODLATTE,
Member of Congress.
CONRAD BURNS,
United States Senator.
RICH BOUCHER,
Member of Congress.
PATRICK LEAHY,
United States Senator.

DEAL REACHED ON MANAGING THE INTERNET

(By Matt Moore)

A summit focusing on narrowing the digital divide between the rich and poor residents and countries opened Wednesday with an agreement of sorts on who will maintain ultimate oversight of the Internet and the flow of information, commerce and dissent.

The World Summit on the Information Society had been overshadowed by a lingering, if not vocal, struggle about overseeing the domain names and technical issues that make the Internet work and keep people from Pakistan to Canada surfing Web sites in the search for information, news and buying and selling.

Negotiators from more than 100 countries agreed late Tuesday to leave the United States in charge of the Internet's addressing system, averting a U.S.-EU showdown at this week's U.N. technology summit.

U.S. officials said early Wednesday that instead of transferring management of the system to an international body such as the United Nations, an international forum would be created to address concerns. The forum, however, would have no binding authority.

U.S. Assistant Secretary of Commerce Michael Gallagher said the deal means the United States will leave day-to-day management to the private sector, through a quasi-independent organization called the Internet Corporation for Assigned Names and Numbers, or ICANN.

''The Internet lives to innovate for another day,'' he told The Associated Press.

Negotiators have met since Sunday to reach a deal ahead of the U.N. World Summit on the Information Society, which starts Wednesday. World leaders are expected to ratify a declaration incorporating the deal during the summit, which ends Friday.

While the summit drew thousands of people from around the world, most western countries opted not to send their top-ranking leaders, preferring instead to send government workers and low-level figures.

However, other leaders were scheduled to attend, including Nigerian President Olusegun Obasanjo, Senegal's Abdulaye Wade and Libyan leader Moamer Kadhafi. Venezuelan President Hugo Chavez was due to fly to the summit Wednesday, organizers said.

The summit was originally conceived to address the digital divide—the gap between information haves and have-nots—by raising both consciousness and funds for projects.

Instead, it has centered largely around Internet governance: oversight of the main computers that control traffic on the Internet by acting as its master directories so Web browsers and e-mail programs can find other computers.

The accord reached late Tuesday also called for the establishment of a new international group to give more countries a stronger say in how the Internet works, including the issue of making domain names—currently done in the Latin languages—into other languages, such as Chinese, Urdu and Arabic.

Under the terms of the compromise, the new group, the Internet Governance Forum, would start operating next year with its first meeting opened by Annan. Beyond bringing its stakeholders to the table to discuss the issues affecting the Internet, and its use, it won't have ultimate authority.

Viviane Reding, the EU Commissioner for Information Society and Media, said the agreement paved the way for a progressive forward motion in overseeing Internet governance.

''This agreement was possible because of the strong belief of all democratic nations that enhanced international cooperation is the best way to make progress towards guaranteeing the freedom of the Internet around the globe and also to enhance transparency and accountability in decisions affecting the architecture of the Web,'' she said.

''The fact that the EU spoke with one voice in Tunis, and had stood by its case for more cooperation on Internet governance in the run-up to the summit, certainly strongly influenced this positive agreement,'' she said.

U.S. Assistant Secretary of Commerce Michael D. Gallagher said the compromise's ultimate decision is that leadership of the Internet, and its future direction, will remain in the hands of the private sector, although some critics contend that the U.S. government, which oversees ICANN, if only nominally, could still flex its muscle in future decisions.

''The rural digital divide is isolating almost 1 billion of the poorest people who are unable to participate in the global information society,'' the agency said in a statement.

Ahead of the summit, rights watchdogs say, both Tunisian and foreign reporters have been harassed and beaten. Reporters Without Borders says its secretary-general, Robert Menard, has been banned from attending.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 317) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 317

Whereas the origins of the Internet can be found in United States Government funding of research to develop packet-switching technology and communications networks, starting with the ''ARPANET'' network established by the Department of Defense's Advanced Research Projects Agency in the 1960s and carried forward by the National Science Foundation's ''NSFNET'';

Whereas in subsequent years the Internet evolved from a United States Government research initiative to a global tool for information exchange as in the 1990s it was commercialized by private sector investment, technical management and coordination;

Whereas since its inception the authoritative root zone server—the file server system that contains the master list of all top level domain names made available for routers serving the Internet—has been physically located in the United States;

Whereas today the Internet is a global communications network of inestimable value;

Whereas the continued success and dynamism of the Internet is dependent upon continued private sector leadership and the ability for all users to participate in its continued evolution;

Whereas in allowing people all around the world freely to exchange information, communicate with one another, and facilitate economic growth and democracy, the Internet has enormous potential to enrich and transform human society;

Whereas existing structures have worked effectively to make the Internet the highly robust medium that it is today;

Whereas the security and stability of the Internet's underlying infrastructure, the domain name and addressing system, must be maintained;

Whereas the United States has been committed to the principles of freedom of expression and the free flow of information, as expressed in Article 19 of the Universal Declaration of Human Rights, and reaffirmed the Geneva Declaration of Principles adopted at the first phase of the World Summit on the Information Society;

Whereas the U.S. Principles on the Internet's Domain Name and Addressing System, issued on June 30, 2005, represent an appropriate framework for the coordination of the system at the present time;

Whereas the Internet Corporation for Assigned Names and Numbers popularly known as ICANN, is the proper organization to coordinate the technical day-to-day operation of the Internet's domain name and addressing system;

Whereas all stakeholders from around the world, including governments, are encouraged to advise ICANN in its decision-making;

Whereas ICANN makes significant efforts to ensure that the views of governments and all Internet stakeholders are reflected in its activities;

Whereas governments have legitimate concerns with respect to the management of their country code top level domains;

Whereas the United States Government is committed to working successfully with the international community to address those concerns, bearing in mind the need for stability and security of the Internet's domain name and addressing system;

Whereas the topic of Internet governance, as currently being discussed in the United Nations World Summit on the Information Society is a broad and complex topic;

Whereas it is appropriate for governments and other stakeholders to discuss Internet governance, given that the Internet will likely be an increasingly important part of the world economy and society in the 21st Century;

Whereas Internet governance discussions in the World Summit should focus on the real threats to the Internet's growth and stability, and not recommend changes to the current regime of domain name and addressing system management and coordination on political grounds unrelated to any technical need; and

Whereas market-based policies and private sector leadership have allowed this medium the flexibility to innovate and evolve: Now, therefore, be it

Resolved by the Senate, That it is the sense of the Senate that—

(1) it is incumbent upon the United States and other responsible governments to send dear signals to the marketplace that the current structure of oversight and management of the Internet's domain name and addressing service works, and will continue to deliver tangible benefits to Internet users worldwide in the future; and

(2) therefore the authoritative root zone server should remain physically located in the United States and the Secretary of Commerce should maintain oversight of ICANN so that ICANN can continue to manage the day-to-day operation of the Internet's domain name and addressing system well, remain responsive to all Internet stakeholders worldwide, and otherwise fulfill its core technical mission.

MEASURE PLACED ON THE CALENDAR—S. 2008

Mr. GRASSLEY. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for a second time.

The assistant legislative clerk read as follows:

A bill (S. 2008) to improve cargo security, and for other purposes.

Mr. GRASSLEY. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

ORDERS FOR THURSDAY, NOVEMBER 17, 2005

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, November 17. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period for the transaction of morning business for up to 30 minutes, with the first 15 minutes under the control of the Democratic leader or his designee and the final 15 minutes under the control of the majority leader or his designee; further, that the Senate then resume consideration of S. 2020, the tax relief reconciliation bill, and that there be 10 hours equally divided for debate remaining under the Budget Act for the consideration of the bill.

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

PROGRAM

Mr. GRASSLEY. Mr. President, tomorrow we will resume consideration of the tax relief reconciliation bill with 10 hours of debate remaining under the agreement just reached. We have a lot of work to do on this bill and on other must-do legislative items before we adjourn for the Thanksgiving holiday. Senators should be ready for late nights with many votes. Before we leave this week, we will need to act on the tax relief bill, as well as appropriations conference reports, the PATRIOT Act conference report, and another short-term continuing resolution. The majority leader has asked Senators to remain flexible in that a weekend session is very likely.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:25 p.m., adjourned until Thursday, November 17, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 16, 2005:

DEPARTMENT OF AGRICULTURE

MARC L. KESSELMAN, OF TENNESSEE, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF AGRICULTURE, VICE NANCY SOUTHARD BRYSON.

EXECUTIVE OFFICE OF THE PRESIDENT

RICHARD T. CROWDER, OF VIRGINIA, TO BE CHIEF AGRICULTURAL NEGOTIATOR, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, VICE ALLEN FREDERICK JOHNSON, RESIGNED.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DANIEL MERON, OF MARYLAND, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, VICE ALEX AZAR II.

DEPARTMENT OF STATE

CLAUDIA A. MCMURRAY, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, VICE JOHN F. TURNER, RESIGNED.

NATIONAL LABOR RELATIONS BOARD

PETER N. KIRSANOW, OF OHIO, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RONALD E. MEISBURG.