The House met at 10 a.m.  

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

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

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

THE JOURNAL 

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

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

PLEDGE OF ALLEGIANCE 

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

Mr. DeFAZIO led the Pledge of Allegiance as follows: 

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

ANNOUNCEMENT BY THE SPEAKER 

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

NOTICE 

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

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

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date. 

Senators’ statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at “Record@Sec.Senate.gov”. 

Members of the House of Representatives’ statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60. 

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily. 

By order of the Joint Committee on Printing. 

TRENT LOTT, Chairman.
H11658

CONGRESSIONAL RECORD — HOUSE
December 15, 2005

PRESCRIPTION DRUG PRICING

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

Mr. MURPHY. Mr. Speaker. Americans purchase 68 percent more prescription drugs today than they did just 10 years ago, and at the same time, retail prescription prices have risen three times the rate of inflation. How can people afford the medication they need, when drug companies propose price controls, others want the government to pay, but let us also give the power to the patient. Whether we are buying groceries or clothes or cars or even airline tickets, when consumers can compare prices they can drive those prices down. Why not do the same for prescription drugs?

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

RECORD TRADE DEFICIT

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

Mr. DeFAZIO. Madam Speaker, well, the Bush administration set yet another record yesterday. Congratulations to the Bush administration. We set the highest 1-month trade deficit in the history of the United States, eclipsing the highest deficit figure previous record which was set last month. We are headed toward a $718 billion trade deficit this year. We are borrowing $2 billion a day from people overseas to buy things made overseas that used to be made here, and they keep standing up on that side of the aisle and saying what is wrong with this country. By 2004, his company had 150 employees and was shipping more than 100,000 magnets per week.

IRAQ’S PARLIAMENTARY ELECTIONS

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

Mr. CONAWAY. Madam Speaker, I rise today in support of the Iraqi people. Today, millions of people in Iraq are headed to the ballot box to cast their vote for a free and open society. This vote stands directly in opposition to the prior government which was predicated on terror and fear, and ruled by the iron fist of one of the world’s most vicious dictators. That is the most powerful blow to the terrorists and rejectionist elements of the Iraqi insurgency to date. Iraqis are determining their own destination, their own destiny, and by doing so they have reached an important benchmark drawing the U.S. closer to victory and reducing American presence in Iraq. Today’s parliamentary elections in Iraq is about the war in Iraq, or the health of our economy. We have got a lot to boast about, and I think it is important that national leaders stand up and talk about the great things that are happening in this country. I applaud what we have done. Reflective in the numbers we have shown leadership, the Nation is stronger than ever, our economy is better than ever, and I think we all ought to wish people a Merry Christmas as we head into a prosperous season.

HONORING RALPH H. BAER

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

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

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

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

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

TRADE POLICY

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

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

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

If you listen to the other side of the aisle, it is a pity party, it is pessimism, it is negativity, and it seems to spawn itself to a defeatist attitude whether it
have the makings of a watershed moment in history, not only for the Middle East, but for the long-term security of the United States.

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

IRAQI ELECTIONS

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

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

MEDICARE PART D

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

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

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

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

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

NEITHER PEACE ON EARTH, NOR GOODWILL TOWARD MEN

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

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

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

With similar zealotry to preserve the right to torture, cut food stamps and deny aid to abused and neglected children, some Republicans’ public policy preach that it’s the rest of us who have forgotten the meaning of Christmas.

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

STRONG ECONOMY

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

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

Just in time for holiday travel, gas prices continue to decline and are down nearly 23 cents in the last 4 weeks. Sales of new homes rose 13 percent in October, which was the largest monthly gain in 12 years. Finally, nearly 4.5 million jobs have been added in the last 2 1/2 years; this is seen an impressive 200,000 jobs per month.

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

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

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

RESPECTFUL BORDER SECURITY

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

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

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

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

I urge my colleagues to be respectful of the institution, to be respectful of the三星 and his bill which Americans on September 11. Today’s election is a step in the right direction.

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

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

IRAQ AND IMMIGRATION

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

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

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

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

IRAQI PARLIAMENTARY ELECTIONS

(Mr. FITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)
Mr. PITTS. Madam Speaker, today is a historic day for democracy and freedom. Iraqis go to the polls to democratically elect the 275 seats of the new Iraqi Council of Representatives. The newly elected Council will then select a Prime Presidency Council and a Cabinet of Ministers.

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

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

WELCOMING HOME UNITS OF TEXAS ARMY NATIONAL GUARD

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

Mr. BURGESS. Madam Speaker, the gentleman from Pennsylvania is exactly right. In fact, if my arithmetic is correct, the polls in Iraq closed just a little over an hour ago. Of course, we owe the great success of three successful elections in Iraq to the dedication of our troops that have served so well over there. In fact, this past weekend in North Texas, 1,400 Texans returned home through the 56th Combat Brigade, over 2,000 Texans from the Texas Army National Guard who have been serving for 11 months in the country of Iraq.

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

The 56th Battalion was not without its casualties. There were six who died in combat, two who died in training accidents, and 38 were wounded. Fortunately, none of the soldiers that left from Denton, Texas, were killed in action in Iraq. Only one was wounded. During that time they performed 7,000 combat patrols, escorted convoys for 1.3 million miles, and built 15 schools.

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

NEEDS OF THE AMERICAN PEOPLE

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

Ms. SOLIS. Madam Speaker, today I rise to express my strong disappointment in the misguided priorities of the Republican majority in Congress. As we are preparing to adjourn for this year, we have not addressed the real needs of the American people. In my district in East Los Angeles and the San Gabriel Valley and across this country, more and more families are being forced to make difficult choices.

The absence of affordable housing, health care, a living wage for workers and high heating costs are just a few of the reasons that more people are slipping into poverty. According to the U.S. census, there were 37 million people living in poverty in 2004, an increase of 5.4 million during the Bush administration.

In my district alone, 20,000 families live below the poverty line. We are failing the working men and women of our country, we are failing our children, and we are failing the senior citizens as well. I urge my colleagues today to work together to meet the needs of all American people and let’s put their priorities first.

IMMIGRATION ENFORCEMENT

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

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

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

SALUTING PROGRESS AND MILESTONE ELECTIONS IN IRAQ

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

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

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

We must continue down the path of democracy; they should know the American people are proud of their continued successes and believe in the future of Iraq.

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

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

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

The Clerk read the resolution, as follows:

H. Res. 602
Resolved. That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 2830) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes. The bill shall be considered as read. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means now before the House, the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted. All points of order against the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) 90 minutes of debate equally divided among and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce and the chairman and ranking minority member of the Committee on Ways and Means; and (2) one motion to recommit with or without instructions.

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

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

Mr. HASTINGS. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. McGovern), pending...
The bill also encourages lower income small employers to offer pension plans. Annual contribution limits for individual retirement accounts or qualified pension plans, allowing additional catchup contributions, and extending a Federal “match” in the form of an income tax credit for the first $2,000 of annual contributions to an individual retirement account or qualified pension plan.

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

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

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

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

Madam Speaker, I reserve the balance of my time.

Madam Speaker, pension security is an important issue, one indeed which should be addressed by this Congress, but pension security must be addressed in the right way and it deserves to be addressed in a democratic way. Bankruptcies in the airlines, steel, and the auto parts industries, for example, are straining the abilities of the Pension Benefit Guaranty Corporation, or the PBGC, to guarantee the private pensions of workers in these industries. The PBGC was created as an insurance system for America’s private pension plans. It exists to make sure that people can tap into during their retirement. An important part of the American dream is to have a nest egg that people can tap into during their retirement. Unfortunately, there are serious problems with America’s private pension system.

Madam Speaker, pension security is an important issue, one indeed which should be addressed by this Congress, but pension security must be addressed in the right way and it deserves to be addressed in a democratic way. Bankruptcies in the airlines, steel, and the auto parts industries, for example, are straining the abilities of the Pension Benefit Guaranty Corporation, or the PBGC, to guarantee the private pensions of workers in these industries. The PBGC was created as an insurance system for America’s private pension plans. It exists to make sure that people can tap into during their retirement. An important part of the American dream is to have a nest egg that people can tap into during their retirement. Unfortunately, there are serious problems with America’s private pension system.

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

The PBGC is an insurance policy for America’s workers. It is a safety net for the corporation not be able to pay its pension obligations. But it is not supposed to be a dumping ground for corporations who want to boost their bottom line and just do not feel like paying the pensions they promised their workers. It is this looming crisis in America’s pension system that brings us here today.
Now, no one believes we should sit and wait while America’s pension system crashes around us, but we need to address this problem in the right way, and regrettably, Madam Speaker, the Pension Protection Act the Republicans have concocted is not the right way.

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

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

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

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

Congressman GEORGE MILLER, a strong champion of the American worker and working families, recently released a report entitled: Broken Promises: America’s Pension Crisis Worsens. This report shows that pension plans are underfunded by $450 billion; plans are underfunded by $450 billion; one of the study’s pages shows that pension plans are underfunded by $450 billion; with more obligations coming in every year, with more obligations coming in every year, our pension system.”

Ranking Member MILLER, along with Ranking Member the Ways and Means Committee RANGEL, have an answer. They have crafted a substitute that actually protects workers’ pensions. The substitute also reforming the bankruptcy laws so that corporations cannot hide behind bankruptcy in order to dump their unwanted pension obligations on the PBGC. Proving that this bill makes things worse and not better, the report documents that the Boehner-Thomas bill could, and I quote, “cause as many as half of all large corporations to freeze benefits and risk.”

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

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

Broken Promises—America’s Pension Plans at Risk: Independent Analysis Finds That Republican Plan Makes Pension Crisis Worse

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

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

There are the serious warning signs that threaten our nation’s pension plans:

- Pension plans are now underfunded by $450 billion, up over 1,000% since 2000.
- The agency that insures additional pension plans (the Pension Benefit Guaranty Corporation) is $23 billion in the red, and is facing billions more in possible claims from companies such as Delta Airlines, Delphi, and Northwest Airlines.

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

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

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

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

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

- Traditional pension plans, once the sturdy backbone of America’s economy and our communities, are now more underfunded, and continue to receive golden parachutes. A CEO should not receive millions of dollars in bonuses and other incentives if they have terminated the pension plan for their rank-and-file workers.

- Now, I am sure my friends on the other side of the aisle will have a real effect on millions of Americans’ lives and the quality of their lives as they grow older.

- The goal should be to enact legislation that guarantees workers their full pensions. Instead, passage of this bill will actually lead to an increase in the PBGC’s liabilities by billions of dollars. Clearly, that simply cannot be what anyone in this Chamber really wants.

- The Republicans on the Rules Committee late last night said, no, an alternative viewpoint will not be tolerated, cannot be presented to the Members of this House, and it certainly will not be debated and voted on this floor.

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

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

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

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

- Broken Promises—America’s Pension Plans at Risk: Independent Analysis Finds That Republican Plan Makes Pension Crisis Worse

- Broken promises put millions of Americans’ pensions at risk

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

- Today employees and retirees are watching as some employers like United and USAir
either have to freeze some or all benefits if the Republican proposal’s benefit limitation provisions had been in effect (based on the Administration’s most recent data.) The limitation would have increased and lump sum payments for all affected plans, and prohibit future benefit accruals by the most underfunded plans.

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

DEMONSTRATING THE FAIRNESS AND JUSTICE OF DEMOCRATS FIGHT TO SAVE AND STRENGTHEN TRADITIONAL PENSION PLANS

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

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

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

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

CONCLUSION

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

Madam Speaker, I reserve the balance of my time.

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

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

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

In recent years low-interest rates, the stock market decline, and the increasing number of retirees have left many of the nation’s pension plans underfunded. As a result, companies from many industries claim that they will soon be unable to contribute the amount they are required to contribute under law. In particular, the aviation and airline industries have been hit hard by these and other financial difficulties, and the penalties under the current pension law are creating tremendous financial burdens for already struggling employers, and in fact ensuring that companies go into bankruptcy so they can get out from under the burdens of the current pension law. The Pension Protection Act provides the long-term solution that is sorely needed to shore up pension benefits for millions of Americans. It makes the most comprehensive reforms to our Nation’s traditional pension system in more than a generation.

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

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

The bill also ensures that airline workers’ pensions receive needed additional protection. The Senate bill, the Pension Security and Transparency Act of 2005, contains airline pension provisions. The Senate bill allows the airlines to pay their pension obligations over an extended period of time, ensuring that airlines can fund their pension obligation and helping to prevent the Pension Benefit Guaranty Corporation from becoming insolvent as a result of taking on the burden of the airline pensions.

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

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

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

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

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

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

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

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

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

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

The final goes to the heart of the matter, and that is to close that gap. For those pensioners that do not receive their full promised pension the PBGC, they are out that pension money. I am disgusted by the fact that they do not have standing under the
procedures. And I would use Adelphi Corporation, which recently declared bankruptcy as an example of the abuse of the system and the disadvantage that the employees are put under.

Adelphi, headed by Mr. Smith, who also owns Delphi Automotive Systems, when they went bankrupt and they dumped their pensions over, really has no interest in going out of business. They want to dump their liabilities. Under the Bankruptcy Code, Mr. Miller and up to 500 executives at Adelphi are entitled to 30 to 250 percent of their pensions, but those workers who gave their lives to that company who are now short money for the rest of their lives when they need it the most should have some standing. I ask Members to oppose the rule.

Mr. Speaker, I rise today in strong opposition to this restrictive rule for H.R. 2830, the Pension Protection Act and I ask that my colleagues join me in opposition. Last night in the Rules Committee, I offered four amendments. I believe we made this a better bill, none of which were found to be in order. Furthermore, this restrictive closed rule does not even make in order a substitute measure authored by Ranking Members MILLER and RANGEL. In a time when Delphi will be awarding 500 executives, bonuses of 30 percent to 250 percent of their pensions over, really has no interest in going out of business. They want to dump their liabilities. Under the Bankruptcy Code, Mr. Miller and up to 500 executives at Adelphi are entitled to 30 to 250 percent of their pensions, but those workers who gave their lives to that company who are now short money for the rest of their lives when they need it the most should have some standing. I ask Members to oppose the rule.

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

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

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

A couple of the provisions I would like to highlight are reforms. These are significant changes and require employers to make significant contributions to the plans to meet 100 percent of the projected benefit funding target. That is an improvement. This bill provides for a permanent interest rate to more accurately measure liabilities. That is an improvement. It appropriately raises premiums that employers pay into the PBGC. I believe that a promise is a promise, and if a company emerges from bankruptcy with the finances to pay the difference of a lower pension, they should do so. Once again, I urge my colleagues to oppose this restrictive rule.

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

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

Madam Speaker, I rise in support of the rule and the bill. And frankly, I never get tired of the discussion from the other side, for oftentimes they accurately identify the problem, and then completely ignore the solution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This pension plan was designed when corporations went out of business. The
gentleman from Indiana is here. When Studebaker went out of business we created this because there was no more company. Yesterday in USA Today United Airlines announced it is coming out of bankruptcy and a couple of hundred executives are going to take 5 percent in the company and they are going to leave bankruptcy with $285 million in their pocket, in their pocket. And those workers who gave back their pensions, gave back their wages year after year after year to have a company which was mismanaged and run into the ground, they leave with nothing. You say, oh, they have a job. Well, the people who are responsible, the executives for running this company, they leave with stock bonuses.

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

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

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

Now, I share some of the concerns of my colleague from California, because I have had a frustration in watching people who work their whole life, see their pensions reduced or eliminated at the time some of the executives have enriched themselves. And I supported this bill. I supported this bill because long term it will help the Pension Guaranty Corporation, but short term our goal has to be how are these companies going to help this airline which was mismanaged and run into the ground. And those workers who with $285 million in their pocket, in their pocket, are going to dump their pensions to escape bankruptcy and raise their bottom line will have a tougher time doing so.

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

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

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

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

The gentleman from Indiana tells us we should all be happy because the Education Committee deliberated on this and there were votes in that committee. I should remind the gentleman that there are 49 members of the Education Committee. There are 435 Members of the House of Representatives. The gentleman gets all upset when Mr. Miller talks about the fact that it is important for us to be an example to Iraq about what democracy is, and that there are elections in Iraq and, you know, here we are engaged in an undemocratic process here today. But I will say this. At least in Iraq everyone has an opportunity to vote. Here we are being denied an opportunity deliberately on this floor on an issue that impacts millions and millions of our fellow citizens. This is just not democracy. This is not a deliberative process. This is a closed process where legitimate, important debate on important issues is being denied routinely.

Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Ms. Jackson-Lee).

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

Ms. Jackson-Lee of Texas asked and was given permission to revise and extend her remarks. Ms. Jackson-Lee. Mr. Speaker, I have to join the gentleman from Massachusetts on his concern and dismay, frustration, and I think that the outrage that the opportunity for a Democratic substitute, first of all, to express some of the failures of this particular underlying bill and as well the opportunities to improve this legislation seemingly has been denied.
I speak from a particularly unique perspective, Mr. Speaker, because my district contained Enron, and the thousands of employees that, within hours of the bankruptcy filing by Enron, lost not only their jobs but their lives, their dignity, their personal rights and even their homes. And then we speak to the pensions and the investment of course in company stock. But this particular bill as it relates to the pension issue just does not go far enough because what it happens to do is it emphasizes the pension crisis, and it causes many of the companies, and I think those who are listening beyond the borders of this particular Chamber should understand that those who had bought into the so-called "family" that Enron represented, those liabilities or the potential of the bankruptcy filing by Enron, lost thousands of employees that, within hours of the filing, were forced to freeze or abandon their pension plans. This does not encourage investment in your pension plans. It also denies the necessary flexibility and relief for airlines that did not get in this bill, but is in the Senate bill.

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

This, of course, provides a funding crisis that is far worse. It increases the debt that causes companies to be the ones who today really causes companies to freeze or abandon your pension plans. This does not encourage investment in your pension plans. It also denies the necessary flexibility and relief for airlines that did not get in this bill, but is in the Senate bill.

Mr. Speaker, I rise in strong support of this rule and of H.R. 2830, the Pension Protection Act of 2005. I sincerely appreciate having the opportunity of speaking today of the future of pension plans and pension security for our citizens.

Mr. HASTINGS, as he is certainly presenting this in a very positive manner. I commend Chairmen BOEHNER and THOMAS for crafting just a comprehensive and necessary legislation. This measure will both preserve and strengthen current employee sponsored employer sponsored retirement system for both current and former retirees.

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

That is why it is so disheartening to see the Democrats and their leader NANCY PELOSI continue their just say no obstructionism by urging their Members to oppose this critical legislation. Rather than support pension reform that would aid American workers, the Democratic leadership continues its cynical and destructive strategy of opposing all substantive legislation in a futile attempt to influence public opinion against the Republican Congress. The opposition’s motives could not be more transparent on this issue. The administration, employers, including auto makers, airlines and manufacturers, along with labor unions, including the United Auto Workers, Carpenters, United Food and Commercial Workers all support this reform measure and have urged all Members of Congress to support passage of H.R. 2830. For those Members on the other side of the aisle who demonstrate courage and reject their leadership’s contemptuous call to oppose this legislation, you will be rewarded by the gratitude of your constituents and all Americans for doing the right thing.

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

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

Let me just again say to the gentleman from South Carolina who just spoke, what we are asking for here is an opportunity to offer what we think is the best approach to helping people who disagree with you. We disagree with your approach. Not only do we disagree with your approach, the AARP disagrees with your approach.
H. R. 2380 would turn back the clock and replace ERISA’s prohibition on conflicts of interest with a weak disclosure model—an inappropriate and unnecessary step given today’s marketplace. Over half of existing plans already provide investment advice to their employees through financial institutions and firms that do not have a financial conflict. Large financial service providers have already developed alliances with independent advisors to make such advice available.

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

AARP urges you to stand with us in opposition to Pension-related provisions in H.R. 2380 in order to provide protections for older workers that are necessary, reasonable and fair, and to ensure that employers provide quality investment advice without the potential for conflict. If there are additional questions or you need further information, please feel free to call me or have your staff contact Frank Tooke at (202) 434-3760.

Sincerely,

William D. Novelli,
Chief Executive Officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I urge my colleagues to support this bill.

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

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

The bottom line is that many of us who have been on the side of workers consistently have expressed concerns about this bill and what its impact will be on working families. We think that this bill should not only be much better, but, in fact, this bill, as it stands, will
Mr. BOEHNER. Mr. Speaker, claiming my time, I think the gentleman is mistaken. There is no crisis in America when it comes to the issue of protecting people's pensions. And I think all of us on both sides of the aisle have a responsibility to work hard, to develop legislation that will, in fact, protect American workers and retiree pensions that they have been promised.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The yeas and nays were ordered. The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the
Mr. Speaker, House Resolution 610 is a structured rule. It provides 2 hours of general debate, equally divided among controlled by the chairman and ranking minority member of the Committee on the Judiciary and the chair- man and ranking minority member of the Committee on Homeland Security. It waives all points of order against consideration of the bill. It provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary and now printed in part B of the report accompanying the resolution, shall be considered as adopted in the House and in the Committee of the Whole and shall be consid- ered as read. It waives all points of order against the bill, as amended.

This resolution makes in order only those amendments printed in part B of the Rules Committee report. It pro- vides that the amendments printed in part B of the bill may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally di- vided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the ques- tion in the House or in the Committee of the Whole. It waives all points of order against amendments printed in part B of the report, and it provides that after disposition of the amend- ments printed in part B of the report, the Committee of the Whole shall rise without motion, and no further consid- eration of the bill shall be in order ex- cept by a subsequent order of the House.

Mr. Speaker, I rise today in support of House Resolution 610 and the under- lying H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. Today, this Congress continues an ongoing and difficult debate. The need for fundamental immigration reform is critical and long overdue. In 1986, President Reagan pushed for reforms to address this problem. In 1996, the 104th Congress pushed for more reforms to address the problem. Now here we are 10 years later. This Congress once again has an opportunity to debate how to best secure our borders and re- moved cost and immigration by enacting meaningful changes.

I want to thank Chairman sensor, Mr. HASTINGS, and Mr. KING for this bill to close our borders to illegal immi- grants and potential terrorists.

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

Procrastination and ignoring the problem will simply not make it go away. Every day we put off debating and passing comprehensive reform cre- ates more and more opportunities for illegal immigrants to break our laws and violate our borders with the social, economic and political repercussions. For instance, there are an estimated 7.6 million illegal immigrants in my home State of Georgia and bear an incredible toll on our social services and health care system.

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

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

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

Illegal immigration also endangers the lives of the immi- grants themselves. I do not think this can be stated too forcefully; illegal im- migration also endangers the lives of the immigrants themselves. Just ask the families of the 19 illegal immi- grants who were found dead in the back of a tractor-trailer truck in Victoria, Texas, in May of 2003.

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

First, Mr. Speaker, this bill will make illegal immigration into this country a felony offense, thereby in- creasing the penalties for jumping the border. H.R. 4437 will combat the eco- nomic incentives for illegal immigra- tion by transferring the current em- ployment verification system that validates Social Security numbers from a voluntary program to a manda- tory program.

This bill also would increase civil and criminal penalties for those employers who knowingly and repeatedly employ or hire an illegal worker. Further, this
Mr. Speaker, I reserve the balance of my time.

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

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

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

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

We could have given the House a Christmas present of a bipartisan bill that would secure our border in a real and fair way. Now this bill looks like a gift from an extremist Grinch, rather than a gift from Santa Claus. The Committee on the Judiciary has so loaded up our bill with controversial immigration proposals that now it is opposed by every reasonable business, immigration or human rights group in America. The Irish Lobby for Immigration Reform opposes this bill. The U.S. Chamber of Commerce opposes it. The American Bar Association opposes it. The U.S. Conference of Catholic Bishops opposes it. What reasonable group, Mr. Speaker, opposes it?

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

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

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

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

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

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

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

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

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

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

Mr. HASTINGS of Florida. Mr. Speaker, I yield ½ minute to the gentleman from Houston, Texas (Ms. Jackson-Lee).

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

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

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

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

We are very serious about border security, but this underlying bill does not speak to border security. What it does do is it provides the enormous burden of unfunded mandates and it is impracticable. It cannot work. It does, and you will hear us say this over and over again today, it criminalizes 11 million individuals, as the number seems to be, of undocumented individuals, in this country. That means that they may be here, taxpayers, children in school, recognizing that they may have come to this particular place undocumented. But it criminalizes them by their very presence. That means they have to be mandatorily put in jail. Whether you are an elderly person, whether you are a child, you have to be mandatorily put in jail.

The so-called ‘‘employer verification program’’ was a pilot program. There is
no guarantee in this bill for full funding for that, nor is there a guarantee that the data base is secure enough that the employers can rely upon it. I believe employers should verify who they are employing, but they cannot do it with a system that is fractured and is not funded the way it should be funded.

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

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

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

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

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

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

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

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

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

The thing that is very, very troubling for many of us is the prospect of seeing this debate degenerate into something that it should not be. I believe that we need to have a full recognition of the rights of every human being. I believe that it is absolutely essential if we are to realize that 8 percent of the people who enter this country illegally enter here with one goal and one goal only, and that is to feed their families, to make a better life for themselves, to see their economic standing improve.

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

It is important that we do other things to focus on the supply side, but it is also equally important for us to focus on the demand side, the magnet of illegal immigration. We will all face as an institution. We know that this is a volatile issue, but it is one that does need to be addressed.

I believe that we need to have a full recognition of the rights of every human being. I believe that it is absolutely essential if we are to realize that 8 percent of the people who enter this country illegally enter here with one goal and one goal only, and that is to feed their families, to make a better life for themselves, to see their economic standing improve.

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

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

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

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

The SPEAKER pro tempore (Mr. ADERHOLT). The gentleman from Florida (Mr. HASTINGS) has 24 minutes remaining. The gentleman from Georgia (Mr. GINGREY) has 13 minutes remaining.

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

Mr. Speaker, I rise today in strong opposition to this restrictive rule and the underlying legislation which is not more than an attack on immigrants who were in search of a better way of life for them and their children.

The United States has long been a shining example of inclusion and diversification of our diverse population. In the days of intolerance, we have always managed to rise above our differences and fuel the flame beneath the world’s melting pot. By resolving these differences, we have cultivated a strong nation of citizens from around the world.

That is why I find it so troubling that some here today are determined to
to extinguish that flame with so-called immigration reform that does little to address current immigration challenges or make our borders safer.

Even worse is the manner by which this legislation is being brought to the floor. The House has offered a measager 15 of the 130 amendments that were offered in the Rules Committee are actually made in order. That means that 115 amendments, 115 ideas, 115 voices are all shut out from debate under this rule, and you multiply that by the constituent's voices.

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

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

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

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

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

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

Whatever the reason, Mr. Speaker, if I had a dollar for every time the Republican leadership promised a Member something and failed to keep that promise since 1965, well, I would be a Republican. Words are cheap until they are backed up with action, and if anybody thinks that this part A is getting ready to have the necessary appropriations to undertake the meager measures on border security, then I have a bridge I would like to sell them.

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

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

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

The underlying legislation, however, mocks that diversity and creates a system under which simply applying for citizenship would be risky. Arbitrary factors could deny naturalization on the basis that there is no way to prove that an immigrant is a person of good, moral character.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have 11 million illegal aliens in the United States. Illegal aliens continue to enter the U.S. from the Mexican border at the rate of 8,000 per day. Last year, our border patrol agents arrested 1.2 million illegal aliens attempting to enter the United States.
Significantly, 155,000 arrests of illegal immigrants were from countries other than Mexico. They included illegal immigrants from Iran, Iraq, Afghanistan.

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

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

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

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

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

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

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

(Ms. Matsui of California)

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

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

What we need to do is end the incentives that make these are real people. My grandparents were immigrants. So many people from California, Florida, North Carolina, Texas, New York, I could go on and on, are immigrants. We should take a breath and hold for a moment before we rush this. What we do to address our broken immigration system must be thoughtful.

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

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

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

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

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

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

I urge my colleagues to vote against this rule.

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

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

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

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

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

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

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 2
minutes to my classmate and good friend from New York (Mr. NADLER).

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

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

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

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

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

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

I urge the Rules Committee, if it wants to make sure this is honestly done, make my amendment in order, not just Mr. Thomas’s amendment, which is self-executed in this rule, although applied to a little of the damage, but it leaves wide loopholes. Wide.

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

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

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

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

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

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

Mr. KOLBE. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in strong opposition to this rule and the underlying bill, H.R. 4377.

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

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

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

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

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

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

I am one that does not believe you can do a broad, bipartisan comprehensive immigration bill without including provisions related to guest workers. My district is a microcosm of the country. That means I have agriculture. In fact, I have a ton of fruit and vegetable growers, and they rely on good, migrant labor to harvest their crops, starting with asparagus in the spring, going through apples in the fall.

None of those family operators, none of them, can survive without migrant or seasonal workers. Many have between 50 and 150 workers. Yet in this legislation there are no provisions, none, that will help my growers keep a viable workforce in order to pick their crops.

Whenver I raise this issue, this shortcoming in this bill, I am told the Senate will deal with it. They will save it. They will take it up. Mr. Speaker, what are we punting on the issues? Amendments were submitted to deal with this, but they were rejected by the Rules Committee. That

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

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

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

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Whenever I raise this issue, this shortcoming in this bill, I am told the Senate will deal with it. They will save it. They will take it up. Mr. Speaker, what are we punting on the issues? Amendments were submitted to deal with this, but they were rejected by the Rules Committee. That
means if this rule passes, there will be no debate, let alone a vote on whether these provisions should be included. I think that is wrong, and I would urge my colleagues to vote no on this rule so amendments can be considered. This is too important an issue to gag this debate so we have a real debate, a constructive debate that will actually do something about the problem of illegal immigration.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BERMAN).

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

I want to talk about just one item, which is the citation and release of individuals who are apprehended, who then promise to appear for their proceedings and then promptly disappear. The failure-to-appear rate appears to be in excess of 80 percent. We have heard psychologists say that the definition of insanity is doing the same thing over and over again and expecting a different result. If so, the administration has lost its mind because this situation regarding the illegal immigrant has not resulted in individuals appearing as promised.

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

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

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

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

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

This is called an enforcement bill, but it does nothing to enforce the law and the interior. It says that if you are employing an illegal, you have up to 6 years to check their status; 6 years for that person to stay in the shadows, driving without a license, driving without insurance. That is not enforcement.
We have to have comprehensive reform that deals with border security, a temporary worker program and also dealing effectively with those who are here illegally at present. I hope if we do this bill that we move quickly on to more comprehensive legislation that will do all we need to do.

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

Mr. DOGGETT. Mr. Speaker, all Americans have an interest in securing our borders. This bill is not needed to achieve genuine security nor fairness. It threatens American businesses, agriculture, and it certainly threatens to destroy border commerce and punish hardworking border citizens.

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

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

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

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

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

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

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


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

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

The bill mandates that all employers of all sizes comply with a new government-run electronic/telephonic verification system to determine that all employees are authorized to work. The concept is based on past, very limited pilot projects, and it is doubtful whether a new mandate of this breadth, applicable to over 140 million employees, can realistically be implemented, particularly under this legislation’s deadlines. These pilot projects were limited to about 6,000 employees and only new hires, while the legislation will also apply to existing employees. Further, there have been many practical, documented compliance problems under the program. While improvements have been made, the extension of this program to a much broader universe creates serious questions as to its practicality in the real world. The proposal also includes massive, in some cases uncapped, increases in penalties against employers. Paperwork violation penalties are increased 25-fold—up to $25,000 per individual.

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

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

The Chamber has supported efforts to address these critical issues, and is dismayed that the House rule essentially forecloses any meaningful debate on these important areas. Due to the critical importance of this issue to the business community and our national economy, the Chamber urges you to vote ‘no’ on House Resolution 610, the rule on H.R. 4437.

Sincerely,

R. BRUCE JOSTEN.

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

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

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

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

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The Speaker pro tempore. The yeas and nays are ordered.
Sec. 201. Measures to forestall insolvency of multiemployer plans.
Sec. 203. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 211. Funding rules for multiemployer defined benefit plans.
Sec. 212. Additional funding rules for multi-employer plans in endangered or critical status.

TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS

Sec. 301. Interest rate assumption for determination of lump sum distributions.
Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notices.
Sec. 502. Additional disclosure requirements.
Sec. 503. Notice to participants and beneficiaries of section 4010 filings with the PBGC.

TITLE VI—INVESTMENT ADVICE

Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.

TITLE VII—REDUCTION LIMITATIONS

Sec. 701. Increase in deduction limits.
Sec. 702. Updating deduction rules for combination of plans.

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

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

SEC. 101. MINIMUM FUNDING STANDARDS.

(a) Repeal of Existing Funding Rules.—Sections 302 through 306 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1086a) are repealed.

(b) New Minimum Funding Standards.—Part 5 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

“MINIMUM FUNDING STANDARDS

Sec. 302. (a) Requirement to Meet Minimum Funding Target.

“(1) IN GENERAL.—A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any 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 is attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any amortized portion of the minimum funding standard for any preceding plan year.

“(B) 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 is attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any amortized portion of the minimum funding standard for any preceding plan year.

“(2) Determination of Business Hardship.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

“(A) the employer is operating at an economic loss.

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

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

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

“(3) Waived Funding Deficiency.—For purposes of this part, the term ‘waived funding deficiency’ means the portion of the minimum funding standard (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.

“(B) In General.—A plan 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)).

“(II) Application of Corporations.—If the Secretary of the Treasury refers to the Pension Benefit Guaranty Corporation, by a contributing sponsor, or a member of such sponsor’s controlled group (within the meaning of section 4001(a)(14)), a plan to which this part applies, the Corporation is authorized to act as the agent of the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph is subject to the safegarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

“(C) Exception for Certain Waivers.—

“(1) In General.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

“(B) 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 any portion of the amortization charge amortized as required under section 303(j), and

“(ii) the amount of the waived funding deficiency and any portion of the amortization charge amortized as required under section 303(b)(2)(C).

“(C) Waivers of Mortgaged Portion Not Allowed.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (b) attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any amortized portion of the minimum funding standard for any preceding plan year.

“(D) 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.

“(E) Waived Funding Deficiency.—For purposes of this part, the term ‘waived funding deficiency’ means the portion of the minimum funding standard (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

“(F) Security for Waivers for Single-Employer Plans, Consultations.—

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“(B) 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 any portion of the amortization charge amortized as required under section 303(j), and

“(ii) the aggregate total of shortfall amortization installment determined for succeeding plan years under section 303(c)(2), is less than $1,000,000.

“(G) Treatment of Waivers for Which Applications Are Pending.—The amount described in clause (1) 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.

“(H) Special Rules for Single-Employer Plans.—

“(A) Application Must Be Submitted Before Date 2 1/2 Months After Close of Plan Year.—The case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year.
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.

(3) CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantively equivalent requirement of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

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

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

(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each plan sponsor to provide evidence satisfactory to such Secretary that such amendment applying to a plan year which is the target normal cost of the plan for the plan year is the sum of the amount determined under paragraph (1) plus a shortfall amortization charge for such plan year determined under paragraph (c).

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

(C) VESTING.—In any case in which the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date is less than the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the sum of the amount determined under paragraph (1) plus a shortfall amortization charge for such plan year determined under paragraph (c).

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

(1) the ratio (expressed as a percentage) which—

(i) the value of plan assets (determined without regard to subsection (e)(1)(B)) for the plan year which are held by the plan immediately before the valuation date.

(ii) the funding target of the plan for the plan year which is determined without regard to subsection (g)(1), is at least 80 percent, and

(2) the plan sponsor elects (in such form and manner as shall be prescribed in regulations of the Secretary of the Treasury) to credit against the minimum required contribution for the current plan year all or a portion of the funding standard carryover balance and the pre-funding balance (to the extent provided for in section 412) for the preceding plan year (not in excess of such minimum required contribution),

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

(2)賽FASTAMORATION CHARGE.—In any case in which the value of plan assets (determined without regard to subsection (g)(1)), the funding target of a plan for a plan year is increased by reason of any increase in compensation during the current plan year, the increase shall be treated as having accrued during the current plan year.

(3) CROSS REFERENCE.—For purposes of this section, subject to subsection (g)(2), the term ‘target normal cost’ means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. If any accrued benefits which are not expected to be earned under a plan during a preceding plan year are not included in the plan year, the present value of such benefits shall be included in the determination of target normal cost for such plan year.
(1) VALUE OF PLAN ASSETS.—For purposes of this section (other than paragraph (4) and sub-sections (a)(2) and (h)(3)), the term ‘value of plan assets’ means the excess of the value of plan assets over liabilities (determined with regard to this paragraph) over the sum of—

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

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

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

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

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

(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year.

(4) CONTRIBUTIONS FOR PRIOR PLAN YEARS.—For purposes of this section (other than paragraph (4) and subparagraph (A) of section 412(f)(2)) and regulations prescribed by the Secretary of the Treasury, contributions to any plan maintained by any employer (or any member of such employer’s controlled group) with 1 or more employees of such employer or member shall be taken into account.

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

(1) PLANS NOT IN EXISTENCE IN PRECEDING PLAN 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.—For purposes of this paragraph—

(i) PLANS NOT IN EXISTENCE IN PRECEDING PLAN 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) PLANS IN EXISTENCE IN PRECEDING PLAN YEAR.—For purposes of this paragraph—

(A) IN GENERAL.—Except as otherwise provided, the plan year shall be made as of the valuation date of the plan for such current plan year.

(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year.

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

(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRANT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including a reasonable projection of benefits) which are payable during the 5-year period beginning when such payment was made and ending on the valuation date of the plan.

(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of this paragraph—

(A) any such method providing for averaging any such method, the third segment rate for a plan with 3 or more years remaining in the valuation period, the single rate of interest determined to be payable during the 5-year period beginning when such payment was made and ending on the valuation date of the plan.

(ii) SECOND SEGMENT RATE.—The term ‘second segment rate’ means, with respect to any plan year, the single rate of interest determined to be payable during the 5-year period beginning when such payment was made and ending on the valuation date of the plan.

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

(i) FIRST SEGMENT RATE.—The term ‘first segment rate’ means, with respect to any plan year, the single rate of interest which will 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 plan year, 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.

(iii) THIRD SEGMENT RATE.—The term ‘third segment rate’ means, with respect to any plan year, 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.

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

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

(ii) 3-YEAR WEIGHTED AVERAGE.—The term ‘3-year weighted average’ means an average of the yields on investment grade corporate bonds with various maturities.

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

(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 265(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and the rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and the rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and the rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve for each month.

(G) TRANSITION RULE.—

(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, and third segment rates for a plan with a valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which made and all succeeding plan years unless revoked with the consent of the Secretary of the Treasury.

(ii) THE PRODUCT OF SUCH RATE FOR SUCH MONTH DISREGARDED.—For purposes of this subparagraph, the term ‘the product of such rate for such month’ means, in respect to any plan year, the single rate of interest which will 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.

(iii) THIRD SEGMENT RATE.—The term ‘third segment rate’ means, with respect to any plan year, 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.

(iv) MORTALITY TABLES.—The mortality tables used in determining any present value or making any computation under this section shall be the RP-2000 Combined Mortality Tables published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Protection Act of...
2005 and as revised from time to time under subparagraph (B).

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

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

"(4) No amount of benefit payments in the form of lump sums or other optional forms.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

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

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

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

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

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

"(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4008(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)(13)) which are covered by this paragraph (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

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

"(6) CARRYOVER BALANCES.

"(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 applicability of this paragraph to that plan for any plan year shall be determined as if the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

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

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

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

"(i) 20 percent, by

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

"(7) FUNDING-STANDARD CARRYOVER BALANCES.

"(A) PRE-FUNDING BALANCE.

"(i) IN GENERAL.—The plan sponsor of a single-employer pension plan to which this paragraph applies shall maintain a funding standard carryover balance for purposes of this section.

"(ii) When determined under subparagraph (B)(1), the funding standard carryover balance shall consist of a beginning balance of zero, in addition to the carryover balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

"(B) FUNDING-STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, the amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution, and

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

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

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

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

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

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

"(ii) the amount elected by the plan sponsor as a reduction in the funding standard carryover balance (for purposes of this section).

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

"(F) FUNDING-STANDARD CARRYOVER BALANCE.—

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

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

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

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

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

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

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

"(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year and ending on the date that payment of such portion is made.

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

"(I) ADJUSTMENTS.—In determining the pre-funding balance or the funding standard carryover balance of a plan, the valuation date of the plan (before applying any increase or decrease under paragraph (1) or (2)), the plan sponsor, shall, in accordance with regulations prescribed by the Secretary of the Treasury, adjust such balance of the plan so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (e)(1) and any other purpose under this section) in the fair market value experienced by all plan assets for the period beginning with the valuation...
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<th>In the case of the following required installment:</th>
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<td>1st ........................................ April 15</td>
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<td>4th ......................................... January 15 of the following year</td>
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**(D) AMOUNT OF REQUIRED INSTALLMENT.**

For purposes of this paragraph—

(i) In case the amount of any required installment shall be 25 percent of the required annual payment,

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

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

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

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

(E) FISCAL YEARS AND SHORT YEARS. —

(i) Fiscal years. — In applying this paragraph to plans 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.

(F) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS. —

(A) In general. — A plan to which this paragraph applies is a ‘qualified plan’ if, in the case of a plan year beginning after 1986, the plan is described in section 417(e) and—

(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 other benefits, and administrative expenses during the 12-month period for which the plan has elected to be a ‘qualified plan’ under section 417(e)(9) during the plan year,

is equal to or less than 80 percent of plan assets. For purposes of this paragraph, the term ‘plan assets’ means, with respect to any quarter, the sum 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.

(G) 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) is less than the 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 enrollment actuarial certificate 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.

(H) 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 other disbursements as the Secretary of the Treasury shall provide in regulations.

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

(J) WAIVER AMORTIZATION CHARGE. —

(i) In general. — The minimum required contribution for any plan year under subsection (a) shall be increased by the amount of the waiver amortization charge (if any) for such plan year.

(ii) Determination. — The waiver amortization charge for a plan for any plan year is the aggregate total of the waiver amortization instalments for such plan year with respect to the waiver amortization bases for such plan year and each of the 4 preceding plan years.

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

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

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

(1) the amount of required payment under paragraph (1) for such plan year, over

(2) the amount of such required payment that was required under section 302(c) contrary to any waiver amortization charge under subsection (j) for such plan year.

(M) PAYMENT OR MINIMUM REQUIRED CONTRIBUTIONS. —

(i) 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.

(ii) Interest. — Any payment required under subsection (a) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at an effective rate of interest for the plan for such plan year.

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

(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE. — In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full on or before the due date for such installment, the term ‘required contribution’ means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

(B) PLANS TO WHICH PARAGRAPH APPLIES. — For purposes of this paragraph—

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

(1) the required installment, over

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

(ii) Penalty payment. — 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.

(3) ORDER OF CREDiting CONTRIBUTIONS. — For purposes of clause (ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) LIQUIDITY SHORTFALL 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:
(A) the portion of the minimum required contribution of such plan waived under section 302(c) for such plan year, over
(B) the aggregate total of the waiver amortization payments, for such plan year and the 3 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 4 plan years preceding such plan year.

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

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

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

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

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

(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan for any plan year if the funding target attainment percentage (as defined in section 302(b)(2)) of such plan year 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 all required installment payments required under this subsection (including interest paid) which have 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 from day to day until the plan ceases 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 6801 shall apply with respect to a lien imposed by subsection (a) and the rules with respect to such lien under section 302 shall apply.

(D) 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).

(E) 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 section 4021.

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

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

(D) QUALIFIED TRANSFERS.—A defined benefit plan which is a single employer plan (as defined in section 4021(b)) may retransfer assets if the plan continues to be described in paragraph (2) after the execution of a transfer agreement which is a qualified transfer (as defined in section 4021(c) of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets of the plan.

(E) 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.”

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

SEC. 103. LIMITATIONS ON DISTRIBUTIONS AND BENEFITS UNDER SINGLE-EMPLOYER PLANS.

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

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

(A) a plant shutdown, or

(B) any other unpredictable contingent event.

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

(A) a situation or event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

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

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

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

“(A) A plan which is a single-employer plan may provide or require benefits which are payable upon the occurrence of—

(i) a benefit limitation under paragraph (2), or

(ii) a benefit limitation under paragraph (3), or

(iii) a benefit limitation under paragraph (4), or

(iv) a benefit limitation under paragraph (5), or

(v) a benefit limitation under paragraph (6), or

(vi) a benefit limitation under paragraph (7), or

(vii) a benefit limitation under paragraph (8), or

(viii) a benefit limitation under paragraph (9), or

(ix) a benefit limitation under paragraph (10), or

(x) a benefit limitation under paragraph (11), or

(xi) a benefit limitation under paragraph (12), or

(xii) a benefit limitation under paragraph (13), or

(xiii) a benefit limitation under paragraph (14), or

(xiv) a benefit limitation under paragraph (15), or

(xv) a benefit limitation under paragraph (16), or

(xvi) a benefit limitation under paragraph (17), or

(xvii) a benefit limitation under paragraph (18), or

(xviii) a benefit limitation under paragraph (19), or

(xix) a benefit limitation under paragraph (20), or

(xx) a benefit limitation under paragraph (21), or

(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—A single-employer plan shall provide that, in any case in which the funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not provide for any distribution other than—

(A) a distribution which is nonforfeitable to the plan, or

(B) a distribution which is a distribution which the plan’s internal revenue code of 1986, any assets so transferred shall not, for purposes of this section, be treated as assets of the plan.

(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A single-employer plan shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

(d) 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, any reference to a plan shall include a reference to any predecessor plan.

(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATION BASED ON PRIOR YEAR’S FUNDING STATUS.—

(1) IN GENERAL.—The term ‘presumed underfunding’ means, with respect to any plan year, that the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

(2) PLANS WITH NET RECOVERY.—In any case in which the plan’s funding target attainment percentage for any plan year is not less than 100 percent, no amendment to a single-employer plan shall take effect until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

(f) PRESUMPTION OF UNDERFUNDING AFTER 19TH MONTH.—In any case in which no such certification is made with respect to the plan in the first 19 months of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan’s funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 19th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

(g) PRESUMPTION OF UNDERFUNDING AFTER 47TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, and

(ii) the plan’s funding target attainment percentage for the current plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

(iii) as of the first day of the month preceding such plan year, the actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year, until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to

The term ‘plan year’ is defined in section 303 of such Act (as amended by section 101).
10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

(6) EFFECT ON PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of the payment of lump sum distributions or benefit accruals in a non-vested accelerated form or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation is to cease to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of paragraph (5).

(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this subsection, the term ‘funding target attainment percentage’ has the meaning provided such term under section 303(d)(2).

(2) NOTICE REQUIREMENT.—

(A) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended—

(i) by redesignating subsection (j) as subsection (k); and

(ii) by inserting after subsection (i) the following new subsection:

‘‘(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restrictions described in section 206(c)(2) or at such other time as may be determined by the Secretary.’’. (B) PENALTY.—Section 502(c)(1)(A) of such Act (29 U.S.C. 1132(c)(1)(A)) is amended by striking ‘‘section 609’’ and all that follows through ‘‘101(f)(2)’’ and inserting ‘‘section 606, 101(e)(1), 101(f)(2), and 101(j)’’.

(c) SPECIAL RULE FOR PLAN AMENDMENTS.—A plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(9) of the Internal Revenue Code of 1986 as a result of the adoption by the plan of an amendment necessary to meet the requirements of the amendments made by this section.

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plan years beginning after 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after 2006.

(3) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained in a form or a 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply; or

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.

(a) SECURITY REQUIRED FOR PLAN AMENDMENTS RESULTING IN SIGNIFICANT UNDERFUNDING.—Section 307 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056b) is amended—

(1) in subsection (a)(1), by striking ‘‘current liability under the plan’’ and inserting ‘‘the funding target of the plan’’;

(2) in subsection (a)(2), by striking ‘‘funded current liability’’ and inserting ‘‘funding target attainment percentage’’, and by striking ‘‘unfunded current liability’’ and inserting ‘‘unfunded liabilities’’;

(3) in subsection (c)(1)(A), by striking ‘‘funded current liability percentage’’ and inserting ‘‘funding target attainment percentage’’ and by ‘‘unfunded current liability’’ and inserting ‘‘unfunded liabilities’’;

(4) in subsection (c)(1)(B), by striking ‘‘current liability’’ and inserting ‘‘funding target attainment percentage’’;

(5) in subsection (d), by striking ‘‘funded current liability percentage’’ each place it appears and inserting ‘‘funding target attainment percentage’’; and

(6) in subsection (f), by striking the ‘‘terms’’ and all that follows and inserting the following: ‘‘the terms ‘funding target’ and ‘funding target attainment percentage’ shall have the meanings given such terms by sections 303(d) and 303(g)(4), respectively, and the term ‘unfunded liabilities’ means, with respect to any excess (if any) of the funding target of the plan over the value of the plan’s assets determined under section 303(e)(4)’’.

(b) MISCELLANEOUS AMENDMENTS.—Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking ‘‘section 303(e)’’ and inserting ‘‘section 303(c)’’;

(2) in section 101(f)(2)(B), by striking clause (i) and inserting the following:

‘‘(i) a statement as to whether—

‘‘(1) in the case of a single-employer plan, the plan’s funding target attainment percentage (as defined in section 303(g)(4)), or
‘‘(2) in the case of a multiemployer plan, the plan’s funding target attainment percentage (as defined in section 303(e)(4)), is at least 100 percent (and, if not, the actual percentage);’’;

(3) in section 101(d)(8)(B), by striking ‘‘the requirements of section 302(c)(3)’’ and inserting ‘‘the applicable requirements of sections 303(i) and 304(c)(3)’’;

(4) in section 103(d)(8)(B), by striking paragraph (5) and inserting the following:

‘‘(5) 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 sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.’’;

(5) in sections 401(a)(33), 414(c)(11), and 436(a)(1), by striking ‘‘within the meaning of section 303(d)(8) of this Act’’ and inserting ‘‘funding target attainment percentage’’.

(6) in section 304(i)(4)(G), by striking ‘‘section 302(c)(11)(A), without regard to section 302(b)(1), and inserting ‘‘section 302(b)(1)’’;

(7) in section 304(i)(2)(B), by striking ‘‘section 302(c)(8)’’ and inserting ‘‘section 302(c)(2)’’;

(8) in section 204(i)(3), by striking ‘‘funded current liability percentage (within the meaning of section 302(d)(8) of this Act)’’ and inserting ‘‘funding target attainment percentage’’.

(c) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—Section 207 of such Act (29 U.S.C. 1057) is repealed.

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

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 111. MINIMUM FUNDING STANDARDS.

(a) IN GENERAL.—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

‘‘SEC. 412. MINIMUM FUNDING STANDARDS.

‘‘(a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

‘‘(1) IN GENERAL.—A plan to which this paragraph applies shall satisfy the minimum funding standard applicable to the plan for any 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 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) in the case of a multiemployer 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 the plan year which are required under the terms of the plan.

‘‘(2) LIABILITY FOR CONTRIBUTIONS.—

‘‘(A) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installment payment under paragraphs (3) and (4) of section 430(i) shall be paid by any employer responsible for making contributions to or under the plan.

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

‘‘(C) VARIANCE FROM MINIMUM FUNDING STANDARD.—

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

‘‘(A) IN GENERAL.—If—

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

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

the Secretary may, subject to subparagraphs (B) and (C) and the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of 15 (6 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 by the amount of the waived funding deficiency as required under section 430(j), and

"(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 42(b)(3)(C) with the amount of funding deficiency and such amount shall be amortized as required under section 430(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 when the amount attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any waived portion of the minimum funding standard for any preceding plan year.

"(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the Secretary may take into account—

"(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 subsection, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

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

"(A) SECURITY MAY BE REQUIRED.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement and Income Security Act of 1974) to provide security to such plan as a condition of granting or modifying a waiver under paragraph (1).

"(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced in the name of 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) and any member of such 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 paragraph (1)—

"(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, applicable—

"(i) any comments of the Corporation under clause (ii) of subparagraph (A)(i)—

"(ii) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement and Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

"Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 503(b).

"(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

"(I) the short-term amortization charge (within the meaning of section 303(c)(1) for the plan year, and

"(II) the aggregate total of short-term amortization installments determined for succeeding plan years under section 303(c)(2), is less than $1,000,000.

"(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS AREfiled.—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 for a plan year which are pending with respect to such plan were denied.

"(6) 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 application for a waiver under this subsection with respect to any plan year unless an application therefor is submitted to the Secretary before the end of the 2½ month period beginning after the close of such plan year.

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

"(i) with respect to such employer, and

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

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

"(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

"(A) IN GENERAL.—The Secretary shall, 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 paragraph which shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under section 430(d)) that is reasonable to expect that the plan will be continued only if the waiver is granted.

"(B) NOTICE TO EMPLOYER ORGANIZATIONS.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

"(4) CERTAIN INSURANCE CONTRACTS.—

"(A) IN GENERAL.—Except as provided in paragraph (1), the plan is funded exclusively by the purchase of insurance contracts, and

"(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 becomes 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 in such State); and

"(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid in full, 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.

"(F) no policy loans are outstanding at any time during the plan year.
A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.:"

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

SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.

(a) IN GENERAL. —Subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended by adding at the end the following new part:

PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.

(a) Minimum Required Contribution. —

(1) in general. —For purposes of section 412(a)(2)(A), except as otherwise provided in this subsection, the minimum required contribution with respect to a plan for a plan year is the target normal cost of the plan for the plan year determined under subsection (c).

(2) Shortfall Amortization Charge. —In any case in which the value of plan assets determined without regard to subsection (e)(1) of the plan for the plan year which are held by the plan immediately before the valuation date is less than the funding target of the plan for the plan year immediately before the valuation date, the amount necessary to amortize such shortfall may be funded through contributions in installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base.

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

(c) Shortfall Amortization Base. —The shortfall amortization base of a plan for a plan year is the aggregate total of the short-term amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year.

(d) Funding Shortfall. —For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

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

(B) the value of plan assets of the plan for the plan year which are expected to accrue or to be earned during the preceding plan year, with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

(e) Shortfall Amortization Charge. —

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

(2) Shortfall Amortization Installment. —

(A) in general. —For purposes of paragraph (1), the plan sponsor shall determine, with respect to the amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall which may be funded through contributions in installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base.

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

(C) Shortfall Amortization Charge. —The shortfall amortization base of a plan for a plan year is the present value of such assets at such time.

(d) Rules Relating to Funding Target. —For purposes of this section—

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

(2) Funding Target: Attainment Percentage. —The ‘‘funding target attainment percentage’’ of a plan for a plan year is the ratio (expressed as a percentage) which—

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

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

(e) Valuation of Plan Assets and Liabilities. —

(1) Value of Plan Assets. —For purposes of this section (other than paragraph (4) and subsections (a)(2) and (h)(3)), the term ‘‘value of plan assets’’ means the value of plan assets (determined without regard to this paragraph) over the sum of—

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

(B) the cash balance of the plan maintained under subsection (h)(2).

(2) Value of Plan Liabilities. —For purposes of this section (other than paragraph (4) and subsections (a)(2) and (h)(3)), the term ‘‘value of plan liabilities’’ means the value of plan liabilities (determined without regard to this paragraph) over the sum of—

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

(B) the cash balance of the plan maintained under subsection (h)(2).

(3) Shortfall Amortization Charge. —

(1) in general. —The short-term amortization charge for a plan for any plan year is the aggregate total of the short-term amortization installment for each plan year with respect to the short-term amortization bases for such plan year and each of the 6 preceding plan years.

(2) Shortfall Amortization Installment. —

(A) in general. —For purposes of paragraph (1), the plan sponsor shall determine, with respect to the amortization base of the plan for any plan year, the amounts necessary to amortize such short-term amortization which may be funded through contributions in installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the short-term amortization installment for such plan year with respect to such short-term amortization base.

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

(C) Shortfall Amortization Base. —The short-term amortization base of a plan for a plan year is the present value of such assets at such time.

(d) Rules Relating to Funding Target. —For purposes of this section—

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

(2) Funding Target: Attainment Percentage. —The ‘‘funding target attainment percentage’’ of a plan for a plan year is the ratio (expressed as a percentage) which—

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

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

(3) 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 such plan year.

(4) Valuation Date. —For purposes of this section—

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

(B) Exception for Small Plans. —If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year. For purposes of this subparagraph, a defined benefit plan (other than a multiemployer plan) 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.

(5) Application of Certain Rules in Determination of Plan Size. —For purposes of this section—

(1) Plans Not in Existence in Preceding Year. —If in the case of the first plan year of any plan, subparagraph (B) shall apply to such plan immediately by taking into account, 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, such plan shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

(C) Authorization of Use of Actuarial Value. —For purposes of this section, the value of plan assets (determined without regard to paragraph (1)) shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

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

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

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

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

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

(5) Accounting for Contribution Receipts. —For purposes of this section—

(A) Contributions for Prior Plan Years Taken into Account. —For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of such plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after the date on which the payment of such contribution was made, taken into account in such an amount equal to its present value (determined using the effective interest rate of the plan for the plan year immediately before the valuation date of such plan year) as of the valuation date of the plan for such current plan year.

(B) Contributions for Prior Plan Years Disregarded. —For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for a preceding plan year shall not be taken into account, and, in such case, the amount of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective interest of the plan for the preceding plan year for the period beginning when such payment was...
made and ending on the valuation date of the plan.

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

(A) INTEREST RATE.—For purposes of this paragraph and paragraph (A) shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the month in which the yield curve for such month is determined.

(7) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—For purposes of this paragraph, the term ‘second segment rate’ means, with respect to any month, the rate determined without regard to this subparagraph, multiplied by the applicable percentage.

(8) SEGMENT RATES.—For purposes of this paragraph—

(A) FIRST SEGMENT RATE.—The term ‘first segment rate’ means, with respect to any month, the rate determined without regard to this subparagraph, multiplied by the applicable percentage.

(B) SECOND SEGMENT RATE.—The term ‘second segment rate’ means, with respect to the applicable month, the rate which is 5 percent or more of the funding target of the plan for the current plan year that exceeds

(C) THIRD SEGMENT RATE.—The term ‘third segment rate’ means, with respect to any month, the rate which is 5 percent or more of the funding target of the plan for the current plan year that exceeds

(D) MORTALITY TABLE.—(A) The mortality tables used in determining any present value or making any computation under this section, shall be taken into account, including any early retirement or similar benefits accrued as of the beginning of the plan year.

(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 rate 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 the single rate of interest determined to be payable during the 5-year period beginning in 2006 or 2007, the first, second, and third segment rates for a plan with

(3) MORTALITY TABLE.—(A) The mortality tables used in determining any present value or making any computation under this section shall be the RP-2000 Combined Mortality Table, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B). (B) PERIODIC REVISION.—The Secretary shall (at least every 10 years) make revisions in any tables in effect under this paragraph for any plan year in the sum of

(4) TRANSFER RULE.—(A) General.—This paragraph applies to a plan only if

(5) FUNCTIONAL FORMS.—For purposes of this section, the term ‘functional form’ means, with respect to any plan for any plan year, any of the 4 months which precede such month.

(6) APPLICABLE PERCENTAGE.—(i) $700, times the number of participants under the plan (including lump sum distributions), plus

(7) PlANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

(1) The aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4063(a)(4)(B)(ii)(I) of the Employee Retirement and Income Security Act of 1974) of such plan and all other plans maintained by the contributing employers (as defined in section 401(a)(4) of such Act) and members of such sponsors’ controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by this part (without regard to any unfunded vested benefits) exceed $5,000,000; and

(2) 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 $5,000,000, or that excess $5,000,000 and that excess or more of the funding target of the plan before such change.

(3) SPECIFIC RULES FOR AT-RISK PLANS.—(i) Funding Target for Plans in At-Risk Status.—(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is—

(B) supplemental actuarial assumptions described in subparagraph (f).

(C) LOADING FACTOR.—The loading factor applicable with respect to the plan for any plan year is the sum of

(1) The loading factor determined under subparagraph (C).

(2) The supplemental actuarial assumptions described in subparagraph (B).

(3) Mortality tables used in determining any present value or making any computation under this section shall be the RP-2000 Combined Mortality Table, as published by the Society of American Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).
(2) TARGET NORMAL COST OF AT-RISK PLANS.—

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

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

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

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

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

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

(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of plan years, the target normal 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—

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

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

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

(i) 20 percent, by

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

(h) PRE-FUNDING AND FUNDING STANDARD

(C) PRE-FUNDING BALANCE.—

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

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

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

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

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

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

(ii) no election may be made under subparagraph (C)(i).
“(1) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

“(ii) REQUIRED ANNUAL PAYMENT.—For purposes of this paragraph, the term ‘required annual payment’ means the lesser of—

“(I) 90 percent of the minimum required contribution (without regard to any waiver under subsection (d)(3)(A) of this section) for the plan year under this section, or

“(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)(c)) to the plan for the preceding plan year.

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

“(E) FISCAL YEARS AND SHORT YEARS.—

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

“(ii) Short plan year.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

“(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.

“(A) In general.—The term ‘liquidity shortfall’, with respect to any required installment, means—

“(i) the installment that is treated as not paid under this paragraph, an amount equal to the required installment, and to which this subsection applies (as provided under paragraph (2)), if—

“(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.

“(B) in the case of a plan year beginning on or after January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

“(5) WAIVER AMORTIZATION INSTALLMENT.

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

“(B) DUE DATE ; REQUIRED INSTALLMENT.

“The waiver amortization charge for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for such plan year and each of the 4 preceding plan years.

“(C) CERTAIN RULES TO APPLY.

“(1) INTEREST.—

“(B) the aggregate total of the waiver amortization installments, for such plan year and the 3 succeeding plan years, which have not been made before the due date.

“(2) LIQUIDITY SHORTFALL.—The term ‘liquidity shortfall’, with respect to any required installment, means—

“(I) the base amount with respect to such quarter, or

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

“(2) BASE AMOUNT.—

“(1) 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.

“(2) 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 circumstances.

“(III) DISBURSEMENTS FROM THE PLAN.—The term ‘disbursements from the plan’ means all disbursements from the trust, including 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—

“(1) the plan’s funding target attainment percentage for the plan year, and

“(2) 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 the Secretary shall provide in regulations.

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

“(VII) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

“(1) WAIVER AMORTIZATION CHARGE.—

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

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

“(3) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (2), the plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the dollar amount of the waiver amortization base, in level annual installments over a period of 5 plan years beginning with such plan year.

“A plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years, which have not been made before the due date, shall be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

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

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

“(A) the portion of the minimum required contribution of such plan waived under section 412(c)(c) for such plan year, over

“(B) the aggregate total of the waiver amortization installments, for such plan year and the 3 succeeding plan years, which have not been determined with respect to the waiver amortization bases of the plan for each of the 4 plan years preceding such plan year.

“(K) IMPROBABILITY OF FUNDING FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

“(1) IN GENERAL.—In the case of a plan covered under section 4021 of the Employee Retirement Income Security Act of 1974, and to which this subsection applies (as provided under paragraph (2)), if—

“(A) any person makes a contribution payment required by section 412 and this section before the due date for such payment, and

“(B) 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, of the sponsor and any other person who is a member of the same controlled group of which such sponsor is a member.

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

“(M) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

“(N) NOTICE OF FAILURE.—

“(A) NOTICE OF FAILURE.—A person claiming a lien 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).

“(B) NOTICE OF FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—For purposes of paragraph (1), 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 ceases to be described in paragraph (2) during the period referred to in the preceding sentence.

“(O) 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).

“(P) DEFINITIONS.—For purposes of this subsection—

“(A) CONTRIBUTION PAYMENT.—The term ‘contribution payment’ means a payment with a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (1).

“(B) DUE DATE ; REQUIRED INSTALLMENT.—

“The terms ‘due date’ and ‘required installment’ have the meanings given such terms by subsection (i), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 412.

“(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.

“(D) 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.

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

SEC. 113. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

(a) Prohibition of Shutdown Benefits and Other Unpredictable Contingent Event Benefits Under Single-Employer Plans.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, or the occurrence of death or any service, receipt or derivation of any benefit, changing the rate of benefit accrual plan) which has the effect of increasing the liability for benefits.

(b) Funding-Based Limitation on Certain Forms of Defined Benefit Plans.—(1) In General.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not pay any prohibited payment (as defined in section 420(e) of the Employee Retirement and Income Security Act of 1974).

(c) Limitations on Benefit Accruals for Plans With Severe Funding Shortfalls.—(1) Definition of Severe Funding Shortfall.—In any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of that date.

(2) Prohibited Payments.—(A) in the case of subparagraph (1)(A), the amount of the increase in the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year, and

(B) in the case of subparagraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

(3) Restoration by Plan Amendment.—(1) In General.—Except as provided in paragraph (2), in any case in which a prohibition under subsection (b) did not apply to a plan with respect to the plan year preceding the current plan year, the amendments made by this section shall not apply to the plan with respect to such preceding plan year.

(2) Special Rule for Plan Amendments.—A plan shall not fail to meet the requirements of section 206(g) of the Employee Retirement Income Security Act of 1974 solely by reason of the adoption by the plan of a plan amendment necessary to meet the requirements of the amendments made by this section.

(d) Effective Date.—(1) Shutdown Benefits.—Except as provided in paragraph (2), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

(2) Other Benefits.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after 2006.

(3) Transitional Exception.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, and in which the plan was effective at the time of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the 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

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.

SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Amendments Related to Qualification Requirements.—(1) Section 401(a)(29) of the Internal Revenue Code of 1986 is amended to read as follows:

(2) [Benefit limitations on plans in at-risk status.—In the case of a defined benefit plan of any service, receipt or derivation of any benefit, changing the rate of benefit accrual and the provisions of section 401(a)(29) of the Internal Revenue Code of 1986 applied to a plan with respect to the plan year preceding the current plan year, the amendments made by this section shall not apply to the plan with respect to such preceding plan year.

(B) 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

(2) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.

SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.

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(B) 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

(2) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.

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(B) 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

(2) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.

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(B) 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

(2) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.

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(B) 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

(2) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.

SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Amendments Related to Qualification Requirements.—(1) Section 401(a)(29) of the Internal Revenue Code of 1986 is amended to read as follows:

(2) [Benefit limitations on plans in at-risk status.—In the case of a defined benefit plan of any service, receipt or derivation of any benefit, changing the rate of benefit accrual and the provisions of section 401(a)(29) of the Internal Revenue Code of 1986 applied to a plan with respect to the plan year preceding the current plan year, the amendments made by this section shall not apply to the plan with respect to such preceding plan year.

(B) 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

(2) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection which the plan is treated as a termination of such collective bargaining agreement.
(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 calendar year to which such contribution relates.

(2) A tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected first to the extent that

(a) 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.

(b) The requirements for reasonable actuarial assumptions under section 430(f)(1) or 431(c)(3), whichever are applicable, have been complied with.

(3) is sponsored by a company that is engaged primarily in the interurban or intercontinental passenger service.

(b) MODIFIED RULES.—The rules described in this subsection are as follows:

(1) For purposes of section 430(l)(3) of the Internal Revenue Code of 1986 and section 401(a) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act, and

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act, the mortality table shall be the mortality table used by the plan.

(c) CONFORMING AMENDMENT.—

(1) Section 769 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

(2) The amendment made by this subsection shall apply to plan years beginning after 2005.

SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) In General.—Subsection (b) of section 499A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

"(5) the plan sponsor has been required to pay a tax under section 4971(f)(1) or 431(b)(1) on account of a funding shortfall for any plan year which is not paid on or before the due date (as determined under section 4971(f)(2)) for the plan year.

(b) M ODIFIED RULES.

(1) For purposes of paragraph (2), a tax is imposed under section 4971 of such Code on any computation under section 412 of such Code or section 302 of such Act if—

(A) during any period in which any defined benefit plan of an employer is in an at-risk status (as defined in section 412(g)(5)), the assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) or transferred to a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer, or

(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted, such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets become available to satisfy claims of general creditors.

(c) CONFORMING AMENDMENTS.—Paragraphs (4) and (5) of section 499A(b) of such Code, as redesignated by subsection (a) of this section, are each amended by striking "paragraph (1) or (2)" each place it appears and inserting "paragraph (1), (2), or (3)".

SEC. 123. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

(a) In General.—In the case of a plan that—

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

(3) is sponsored by a company that is engaged primarily in the interurban or intercontinental passenger service,

the rules described in subsection (b) shall apply for any plan year beginning after 2005.

(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 calendar year to which such contribution relates,

(b) MODIFIED RULES.—The rules described in this subsection are as follows:

(1) For purposes of section 430(l)(3) of the Internal Revenue Code of 1986 and section 401(a) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act, and

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act, the mortality table shall be the mortality table used by the plan.

(c) CONFORMING AMENDMENT.—

(1) Section 769 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

(2) The amendment made by this subsection shall apply to plan years beginning after 2005.

SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) In General.—Subsection (b) of section 499A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

"(5) the plan sponsor has been required to pay a tax under section 4971(f)(1) or 431(b)(1) on account of a funding shortfall for any plan year which is not paid on or before the due date (as determined under section 4971(f)(2)) for the plan year.

(b) M ODIFIED RULES.

(1) For purposes of paragraph (2), a tax is imposed under section 4971 of such Code on any computation under section 412 of such Code or section 302 of such Act if—

(A) during any period in which any defined benefit plan of an employer is in an at-risk status (as defined in section 412(g)(5)), the assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) or transferred to a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer, or

(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted, such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets become available to satisfy claims of general creditors.

(c) CONFORMING AMENDMENTS.—Paragraphs (4) and (5) of section 499A(b) of such Code, as redesignated by subsection (a) of this section, are each amended by striking "paragraph (1) or (2)" each place it appears and inserting "paragraph (1), (2), or (3)".

SEC. 123. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

(a) In General.—In the case of a plan that—

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

(3) is sponsored by a company that is engaged primarily in the interurban or intercontinental passenger service,

the rules described in subsection (b) shall apply for any plan year beginning after 2005.
(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 under all plan years for the plan (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.

FUNDING STANDARD ACCOUNT.—

(1) SEPARATELY.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged in accordance with 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) over 15 plan years, beginning with the plan year in which the change arises.

(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.

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years.

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years.

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years.

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of this section), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(3)(A)(a)(I) (as in effect on the day before the date of the enactment of this section).

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) over 15 plan years, separate with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(C) any change in past service liability which arises during the period of 5 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the change arises; and

(D) any change in past service liability which arises during the period of 5 plan years, beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) is effective for plan participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

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, in full or partial payment, of 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 EntERS REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balances 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 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 4221 of the Employee Retirement Income Security Act of 1974, was a multiemployer plan is in reorganization under this part, any amount paid by an employer to a fund for purposes of this part shall be treated as a payment to a supplemental program or withdrawal liability payment fund.

(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) and the amount paid by a plan during a plan year, pursuant to the election, to a multiemployer plan is in reorganization under this part, any amount paid by an employer to a fund for purposes of this part shall be treated as a payment to a supplemental program or withdrawal liability payment fund.

(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 subpart and section 412 in such manner as is determined by the Secretary of the Treasury.

(G) SHORT-TERM BENEFITS.—To the extent that a plan amendment adopted after the unfunded past service liability under the plan by reason of an increase in benefits which
are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability as may be attributable to the number of years of the period during which such benefits are payable for "15.

"(c) ADDITIONAL RULES.--

(1) FUNDING METHOD TO BE MADE UNDER FUNDING METHOD.--For purposes of this part, normal costs, accrued liability, past service liability, and experience gains and losses shall be determined by the funding method used to determine costs under the plan.

(2) VALUATION OF ASSETS.--

(A) IN GENERAL.--For purposes of this part, the assets of a plan 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 contract call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall prescribe. Such Secretary 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 on which the plan shall be determined on the basis of actuarial assumptions and methods--

(A) which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the Secretary'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' in subpart D of part 1 of subchapter II of chapter 2 of the Internal Revenue Code of 1986, or a change in the section, if subparagraph (A) is less than the excess (if any) of--

"(i) the lesser of--

(I) the fair market value of the plan's assets,

(II) the value of such assets determined under subparagraph (B) above;

"(ii) MINIMUM AMOUNT.--

(I) IN GENERAL.--In no event shall the funding limitation determined under subparagraph (A) be less than the excess (if any) of--

"(ii) the value of the plan's assets determined under paragraph (2).

(II) ASSET LIMITATION.--If the determinations of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) CURRENT LIABILITY.--For purposes of this paragraph--

(1) IN GENERAL.--The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

(2) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.--For purposes of clause (1), any benefit contingent on an event other than--

(A) age, service, compensation, death, or disability, or

(B) 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.

(3) INTEREST RATE USED.--The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (D).

(4) TREATMENT OF MRs.--

(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 897(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, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(5) SEPARATE MORTALITY TABLES FOR THE DISABLED.--Notwithstanding clause (4) above--

(I) IN GENERAL.--In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used in lieu of the tables under clause (ii) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after January 1 of the calendar year to which the valuation referred to in paragraph (6)(B)(i)(II) applies.

(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.--In the case of disabilities occurring in plan years beginning after December 31, 1994, the mortality table used in determining current liability (as defined in paragraph (6)(B)(i)(II) without regard to clause (iv) thereof) 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.

(6) PERIODIC REVIEW.--The Secretary of the Treasury shall, for purposes of determining the minimum amount of any plan's current liability, review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(7) REQUIRED CHANGE OF INTEREST RATE.--For purposes of determining the current liability for purposes of this paragraph--

(I) IN GENERAL.--If any rate of interest used under the plan under subpart (b)(5) to determine current liability is unreasonable, such rate shall not be used thereafter.

(II) PERMISSIBLE RANGE.--For purposes of this subparagraph--

(A) As used in this section, the term 'reasonable range' means a range 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.

(III) SECRETARIAL AUTHORITY.--If the Secretary of the Treasury finds that the lowest rate under a multiemployer plan (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.

(IV) ASSUMPTIONS.--Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be--

(A) determined without taking into account the experience of the plan and reasonable expectations, but consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(5) FULL FUNDING LIMITATION.--For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not in any case be greater than the benefits which would be payable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

(6) ANNUAL VALUATION.--

(A) IN GENERAL.--For purposes of this section, a determination of experience gains and losses of the plan's liability shall be made not less frequently than once every 5 years review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(B) VALUE DATE.--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 referred to in section 411(d)(3) of the Internal Revenue Code of 1986 applies.

(II) CURRENT YEAR.--In the case of plan years beginning after December 31, 1995, the valuation referred to in subparagraph (A) shall be made as of the date within the plan year to which the valuation referred to in section 411(d)(3) of the Internal Revenue Code of 1986 applies.

(IV) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.--In the case of disabilities occurring in plan years beginning after December 31, 1994, the valuation referred to in subparagraph (A) shall be made as of the date within the plan 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)(B)(i)(II) without regard to clause (iv) thereof).

(V) ADJUSTMENTS.--Information furnished under clause (iv) shall, in accordance with the 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 present value of the assets of the plan is not less than 125 percent of the plan’s current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

(b)(3)(A) PLAN CONTRIBUTIONS DETERMINED—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, and not applied to the plan until the last day of the following plan year, and any contribution under a section 412(a)(7) plan shall not be considered contributions made by the employer for a plan year under this paragraph.

(4) NOTICE.—In any case in which a multiemployer plan is in endangered or critical status for a plan year under this subsection, the plan sponsor shall, not later than 30 days after the date of the certification, presump tion, or deeming, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.
"(C) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year shall be included in the annual report for such plan year for each participating employer and in the multiemployer annual report described in section 104(b)(3).

(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

(a) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

(1) an increase in the plan’s funded percentage for at least 1 additional plan year;

(2) postponement of an accumulated funding deficiency for at least 1 additional plan year;

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computa-
tions, amendments to the plan’s benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(b) RECOMMENDATIONS BY PLAN SPONSOR.—

(1) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no additional increases in contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming amendments reducing future benefit accruals under the plan.

(2) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

(I) employs at least 5 percent of the active participants;

(II) in the capacity of an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants;

the plan sponsor shall provide all such parties with appropriate information so as to allow them to analyze the effect of the plan on the financial obligations of the plan.

(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended as to—

(A) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(B) any amendment reducing future benefit accruals which would result in increases in contributions and reductions in the plan sponsor’s obligations under the plan.

(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

(a) RECOMMENDATIONS BY PLAN SPONSOR.—

(I) the Secretary of the Treasury deter-
mines to be reasonable and which provides for only de minimis increases in the liabilities of the plan;

(II) only repeals an amendment described in section 302(d)(2), or

(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

(b) RESTRICTIONS ON FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 210-day period referred to in subsection (a)(1), the plan shall be in critical status as of the first day of the succeeding plan year.

(c) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

(A) so as to be inconsistent with the funding improvement plan, or

(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the benchmarks described in paragraph (3)(A).

(d) REPORTING RULES FOR FUNDING IMPROVEMENT PLANS IN CRITICAL STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall—

(I) in accordance with this subsection, amend the plan to include a rehabilitation plan under this section. The amendment shall be adopted not later than the day on which the plan is certified to be in critical status under subsection (a)(1) or is presumed to be in critical status under subsection (a)(3), or the first day of the plan year in the case of a plan that is deemed to be in critical status under subsection (b)(7);

(2) CURRICULUM.—A multiemployer plan is in critical status for a plan year if—

(A) the plan is in endangered status for the plan year and the requirements of subsection (b)(7) are met with respect to the plan for such plan year, or

(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

Any multiemployer plan which is in critical status under paragraph (3) shall consist of—

(i) the funded percentage of the plan is greater than 65 percent, and

(ii) the market value of plan assets, plus the present value of any nonforfeitable employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming the terms of the one or more bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this paragraph if, as of the beginning of the current plan year, the sum of—

(i) the market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming the terms of the one or more bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(C) A plan is described in this paragraph if—

(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, taking into account any extension of amortization periods under section 304(e).

(D) A plan is described in this paragraph if—

(i) the plan’s normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(ii) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year or any of the 4 succeeding plan years.

(E) A plan is described in this paragraph if—

(i) the plan’s normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants that are greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

(iii) the plan is projected to have an accumulated funding deficiency during any of the following 3 plan years.

(F) A plan is described in this paragraph if—

(i) the plan is described in paragraph (3) and the plan is projected to have an accumulated funding deficiency during any of the following 3 plan years.

(G) A plan is described in this paragraph if—

(i) the plan is described in paragraph (3) and the plan is projected to have an accumulated funding deficiency during any of the following 3 plan years.

(H) A plan is described in this paragraph if—

(i) the plan is described in paragraph (3) and the plan is projected to have an accumulated funding deficiency during any of the following 3 plan years.
consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation pe-
riod, to be in critical status.

"(ii) measures, agreed to by the bargaining
parties, to provide funding relief, or

"(iii) reasonable measures to forestall possi-
ble insolvency within the meaning of section
304(c)(2), if the plan sponsor determines
that, upon exhaustion of all reasonable
measures, the plan would not cease during
the rehabilitation period to be in critical
status.

"(B) REHABILITATION PERIOD.—The rehabili-
tation period for any rehabilitation plan
adopted under this section is the 18-year
period beginning on the earlier of—

"(i) the second anniversary of the date of
the adoption of the rehabilitation plan, or

"(ii) the first day of the first plan year of
the multiemployer plan following the plan
year in which occurs the first date after the
date of the certification as of which collec-
tive bargaining agreements covering on the
day of such certification at least 75 percent
of active participants in such multiemployer
plan have expired.

"(C) REPORTING.—A summary of any reha-
bilitation plan or modification thereto
adopted during any plan year, together with
annual updates regarding the funding ratio of
the plan, as determined in the annual
report for such plan year under section 108(a)
and in the summary annual report described
in section 108(b)(3).

"(5) DEVELOPMENT OF REHABILITATION
PLAN.—

"(A) PROPOSALS BY PLAN SPONSOR.—

"(i) In general.—Within 90 days after the
date of the adoption under subsection (a)
that the plan is in critical status (or the date
as of which the requirements of subsection
(b)(1) are not met with respect to the plan),
the plan sponsor proposes to the bar-
gaining parties a range of alternative sched-
ules of increases in contributions and reduc-
tions in future benefit accruals that would
serve to carry out a rehabilitation plan
under this subsection.

"(ii) PROPOSAL ASSUMING NO CONTRIBUTION
INCREASES.—Such proposals shall include, as
one of the schedules, a schedule of those
reductions in future benefit accruals that
would be necessary to cause the plan to cease
in critical status if there were no
further increases in rates of contribution to the
plan.

"(iii) PROPOSAL WHERE CONTRIBUTIONS ARE
NECESSARY.—If the plan sponsor determines
that the plan will cease in critical status during the rehabilitation period un-
less the plan is amended to provide for an in-
crease in contributions, the plan sponsor’s
proposals shall include a schedule of those increases in contribution rates that would be
necessary to cause the plan to cease to be in critical status if future benefit accruals
were reduced to the maximum extent permitted
by law and the rate of future benefit accruals
did not exceed 1 percent per plan year.

"(B) PLAN TO IMPROVE ADDITIONAL SCHED-
ULES.—Upon the joint request of all bar-
gaining parties, each of whom—

"(i) employs at least 5 percent of the active
participants, or

"(ii) represents as an employee organiza-
tion, for purposes of collective bargaining, at
least 5 percent of the active participants,
the plan sponsor shall include among the pro-
posed schedules such schedules of in-
creases in contributions and reductions in
future benefit accruals as may be specified by
the bargaining parties.

"(C) IMPLEMENTATION.—In any case in
which the bargaining parties, as of 290 days
after the later of the date of the certification
under subsection (a) or the first day the plan
is in critical status under subsection (a)(3) or
(b)(7), have not agreed to at least one of the
proposed schedules, the plan sponsor shall
amend the plan to implement the schedule
required by subparagraph (A)(i).

"(D) SUBSEQUENT AMENDMENTS.—Upon the
adoption of a schedule of increases in con-
tributions or reductions in future benefit ac-
cruals as part of the rehabilitation plan, the
plan sponsor may amend the plan thereafter
to update the schedule to adjust for any ex-
pected changes in the plan contrary to past actu-
arial assumptions, except that such an
amendment may be made not more than
once in any 3-year period

"(E) ALLOCATION OF REDUCTIONS IN FUTURE
BENEFIT ACCRUALS.—Any schedule containing
reductions in future benefit accruals forming
a part of a rehabilitation plan shall be appli-
cable with respect to any group of active
participants who are employed by any bar-
gaining party (as an employer obligated to
contribute under the plan) in proportion to
the extent to which increases in contribu-
tions under such schedule apply to such bar-
gaining party.

"(F) MAINTENANCE OF CONTRIBUTIONS AND
RESTRICTIONS ON BENEFITS FINDING ADOPTION
OF REHABILITATION PLAN.—The rules of para-
graphs (5) and (6) of subsection (b) shall apply
for purposes of paragraphs (A) and (B) by
substituting the term ‘rehabilitation plan’ for
‘funding improvement plan’.

"(7) DEEMED WITHDRAWAL.—Upon the fail-
ure of any employer who has an obligation
to contribute under the plan to make contribu-
tions in compliance with the schedule adopt-
ed under paragraph (6) as part of the reha-
bilitation plan, the failure of the employer
may, at the discretion of the plan sponsor,
be treated as a withdrawal by the employer
from the plan in section 4205(c) or a partial
withdrawal by the employer under section
4205.

"(d) DEFINITIONS.—For purposes of this sec-
tion—

"(1) BARGAINING PARTY.—The term ‘bargain-
ing party’ means, in connection with a multi-
employer plan, the plan sponsor.

"(A) an employer who has an obligation to
contribute under the plan, and

"(B) an employee organization which, for
purposes of collective bargaining, represents
plan participants employed by such an em-
ployer.

"(2) CURRENT LIABILITY.—The term ‘cur-
rent liability’ means, with respect to a
multiemployer plan, the amount provided such
term in section 304(c)(6)(C).

"(3) UNFUNDED CURRENT LIABILITY.—The
term ‘unfunded current liability’ means the
excess (if any) of the plan’s assets, as
determined under section 304(c)(2), over
the value of the plan’s assets deter-
mined under section 304(c)(2).

"(4) FUNDED VESTED BENEFITS.—The term
‘funded vested benefits’ has the meaning
provided in section 2202(b)(9).

"(5) ACCUMULATED FUNDING DEFICIENCY.—
The term ‘accumulated funding deficiency’ has
the meaning provided such term in sec-
tion 304(a).

"(7) ACTIVE PARTICIPANT.—The term ‘active
participant’ means, in connection with a
multiemployer plan, a participant who is in
covered service under the plan.

"(8) INACTIVE PARTICIPANT.—The term ‘in-
active participant’ means, in connection with
a multiemployer plan, a participant who—

"(A) is not in covered service under the
plan, and

"(B) is in pay status under the plan and has
a nonforfeitable right to benefits under the
plan.

"(9) PAY STATUS.—A person is in ‘pay sta-
tus’ under a multiemployer plan if—

"(A) at any time during the current plan
year, such person is a participant in bene-
ficiary 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
to such a benefit under the plan.

"(10) OBLIGATION TO CONTRIBUTE.—The term
‘obligation to contribute’ has the meaning
provided such term under section 4212(a).

"(b) CONFORMING AMENDMENT.—The table of
contents in the Act (as amended by
the preceding provisions of this Act) is amended
further by inserting after the item
relating to section 304 the following new
item:

"Sec. 305. Additional funding rules for mul-
tiemployer plans in endangered
status or critical status.

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

SEC. 203. MEASURES TO FORESTALL INSOLVENCY
OF MULTIEmployer PLANS

(a) ADVANCE DETERMINATION OF IMPENDING
INSOLVENCY OVER 5 YEARS.—Section
4245(d)(1) of the Employee Retirement
Income Security Act of 1974 (29 U.S.C. 1399(c)(1)) is amended by strik-
ing—

"(1) by striking ‘‘3 plan years’’ the second
place it appears and inserting ‘‘5 plan years’’;

"(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 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 plan years beginning after 2005.

SEC. 204. WITHDRAWAL LIABILITY REFORMS.

(a) REPEAL OF LIMITATION ON WITHDRAWAL
LIABILITY IN THE EVENT OF INSOLVENCY OF
EMPLOYER ASSETS TO UNRELATED PARTIES.

"(1) IN GENERAL.—Section 4225 of the

"(2) CONFORMING AMENDMENT.—The table
of contents in section 1 of such Act is amended
by striking the item relating to section 4225.

"(b) EFFECTIVE DATE.—The amendments
made by this section shall apply with respect to
sales occurring on or after January 1, 2006.

"(c) PARTIAL WITHDRAWALS BY MEANS OF
OUTSOURCING.—

"(1) IN GENERAL.—Section 4212(c)(1) of such
Act (29 U.S.C. 1399(c)(1)) is amended by strik-
ing—

"(A) by striking ‘‘or’’ at the end of clause
(1);

"(B) by striking ‘‘steering’’ at the end of
clause (1) and inserting ‘‘ceased, or’’; and

"(C) by adding at the end the following
new clause:
“(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan arising from plan amendments adopted in such year, over a period of 15 plan years, beginning with the plan year in which the amount arose;

“(iii) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years, beginning with the plan year in which the amount arose;

“(iv) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 10 plan years, beginning with the plan year in which the amount arose;

“(v) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 plan years, beginning with the plan year in which the amount arose;

“(vi) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 40 plan years, beginning with the plan year in which the amount arose;

“(vii) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years, beginning with the plan year in which the amount arose;

“(viii) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 10 plan years, beginning with the plan year in which the amount arose; and

“(ix) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 plan years, beginning with the plan year in which the amount arose; and

“(x) separately, with respect to each plan year, the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 40 plan years, beginning with the plan year in which the amount arose.

“(iii) in General.—For purposes of section 421, the accumulated funding deficiency of a multiemployer plan for any plan year is—

“(i) except as provided in paragraph (ii), the amount, at 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 plan year in which this subsection applies to such plan) over the total credits to such account for such years, and

“(ii) if the multiemployer plan is reorganized, the amount necessary to amortize the accumulated funding deficiency of the plan determined under section 418B.

“(a) 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) over a period of 5 plan years, beginning with the plan year in which the amount arose;

“(C) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 10 plan years, beginning with the plan year in which the amount arose;

“(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 plan years, beginning with the plan year in which the amount arose;

“(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 40 plan years, beginning with the plan year in which the amount arose;

“(F) the amount necessary to amortize in equal annual installments (until fully amortized) over any period beginning with the plan year in which the amount arose, and

“(G) the amount necessary to amortize in equal annual installments (until fully amortized) over any period beginning with the plan year in which the amount arose.

“(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) over a period of 5 plan years, beginning with the plan year in which the amount arose;

“(C) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 10 plan years, beginning with the plan year in which the amount arose;

“(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 plan years, beginning with the plan year in which the amount arose;

“(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 40 plan years, beginning with the plan year in which the amount arose; and

“(F) the amount necessary to amortize in equal annual installments (until fully amortized) over any period beginning with the plan year in which the amount arose.

“(c) Conforming Amendment.—Subparagraph (A) of section 4221(f)(2) of such Act (29 U.S.C. 1390(b)(2)) is amended—

“(1) in subparagraph (A)(i) by inserting ‘two amounts being offset is the greater’ after ‘the amount’;

“(2) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

‘‘(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4221(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subparagraph,’’;

“(d) Effective Date.—The amendments made by this paragraph shall apply to plan withdrawals occurring on or after January 1, 2006.

“(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

“(A) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years, beginning with the plan year in which the amount arose;

“(B) the amounts necessary to amortize in equal annual installments (until fully amortized) over a period of 10 plan years, beginning with the plan year in which the amount arose;

“(C) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 plan years, beginning with the plan year in which the amount arose;

“(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 40 plan years, beginning with the plan year in which the amount arose;

“(E) the amount necessary to amortize in equal annual installments (until fully amortized) over any period beginning with the plan year in which the amount arose; and

“(F) the amount necessary to amortize in equal annual installments (until fully amortized) over any period beginning with the plan year in which the amount arose;

“(g) Application of Forgiveness Rule to Plans Primarily Covering Employees in the Building and Construction Industry.—

“(1) In General.—Section 4203(a) of such Act (29 U.S.C. 1383(d)) is amended—

“(A) by striking paragraph (1); and

“(B) by inserting at the end of such subsection—

‘‘(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to withdrawals occurring on or after January 1, 2006.’’

“(h) Application of Forgiveness Rule to Plans Primarily Covering Employees in the Motor Carrier Industry.—

“(1) In General.—Section 4203 of such Act (29 U.S.C. 1383(d)) is amended—

“(A) by striking paragraph (2); and

“(B) by inserting in lieu thereof—

‘‘(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to withdrawals occurring on or after January 1, 2006.’’

“(i) Application of Forgiveness Rule to Plans Primarily Covering Employees in the Short Haul Trucking Industry.—

“(1) In General.—Section 4203(f) of such Act (29 U.S.C. 1383(d)) is amended—

“(A) by striking paragraph (2); and

“(B) by inserting in lieu thereof—

‘‘(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to withdrawals occurring on or after January 1, 2006.’’

“(j) Application of Forgiveness Rule to Plans Primarily Covering Employees in the Short Line Railroad Industry.—

“(1) In General.—Section 4203 of such Act (29 U.S.C. 1383(d)) is amended—

“(A) by striking paragraph (2); and

“(B) by inserting in lieu thereof—

‘‘(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to withdrawals occurring on or after January 1, 2006.’’

“(k) Repeal of Special Rule for Long and Short Haul Trucking Plans.—

“(1) In General.—Section 4203 of such Act (29 U.S.C. 1383(d)) is amended—

“(A) by striking paragraph (2); and

“(B) by inserting in lieu thereof—

‘‘(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to withdrawals occurring on or after January 1, 2006.’’
date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

(ii) in the case of a plan year service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one plan to another at or before the adoption level under a schedule of plan benefits which—

(1) was adopted before such date, and

(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer’s withdrawal liability under part 1 of subtitle E of title 29 shall be considered an amount contributed by the employer to or under the plan. Any plan may adopt, after notice and a public hearing, a 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 shall be revoked only with the consent of the Secretary.

(C) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods. (A) which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations), and (B) which are 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 creates under accrued liability 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 an amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of paragraph (2) and subparagraph (B) of subsection (b)(3) which are to be treated under paragraph (4)(A)(v) shall be considered fully amortized for purposes of such subparagraphs.

(6) FULL-FUNDING LIMITATION.—(A) In the case of a plan year in which

(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.—In any 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).

(iii) ASSETS.—For purposes of clause (I), assets shall not be reduced by any credit balance in the funding standard account.

(C) CURRENT LIABILITY.—For purposes of this paragraph—

(i) in general.—The term ‘current liability’ shall mean the actuarial liability under this paragraph shall be the rate of interest determined under subparagraph (D).

(iv) MORTALITY TABLES.—(A) COMMISSIONERS’ STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under clause (ii) apply, the mortality table used in determining current liability under this paragraph shall be the mortality table prescribed by the Secretary which is based on the prevailing commissioners’ standard table (described in section 303) 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 actuarial experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results obtained under this part, the expected increase in current liability under this subsection, and the interest rate used.

(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv), in the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used in lieu of the tables under clause (ii) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables whose deficiencies occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning after such date.
occurring in plan years beginning after Decem-
ber 31, 1994, the tables under subclause (I)
shall apply only with respect to individu-
als described in such subclause who are dis-
abled before the effective date of title II of the
Social Security Act and the regulations there-
under.

(1) In General.—If any rate of interest used under subsection (b)(5) to determine cost is not within the permi-
sible range, the plan shall establish a new rate of interest within the permissible range.

(2) Permissible Range.—For purposes of this subpara-
graph—

(i) In General.—Except as provided in subclause (I), the term ‘permissible range’ means a range for a year which is more than 5 percent above and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securi-
ties during the first 12 months of the year, plus the actual expected rate of increase of the liabil-
ity for purposes of this paragraph (4), extend the pe-
riod of years required to amortize any unfunded liabil-
ity described in any clause of subparagraph (b)(2)(B) for a period of time not in excess of 5 years.

(2) Extension for Cause.—The period of years referred to in paragraph (1) may be extended for cause if the Secretary determines that the plan had reasonable cause for not applying such requirements of subsection (c) as a result of unforeseen market conditions or other exceptional circumstances, to a date within the plan year of not more than two years after the beginning of such plan year.

(3) Proof.—If a plan maintains such extension, the plan shall certify to the Secretary whether or not the plan is in critical status for such plan year.

(4) Effective Date.—The amendments made by this section shall apply to plan years beginning after 2005.

SEC. 412. ADDITIONAL FUNDING RULES FOR MULTIEmployer Plans in EnDANGERED or CRITICAL Status.

(a) In General.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 431 the following new section:

SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEmployer Plans in ENd ANGERED STATUS OR CRITICAL Status.

(a) Annual Certification by Plan ActuarY.

(b) Actuarial Projections of Assets and Liabilities.

(a) In General.—In making the deter-
iminations under paragraph (1), the plan actuar-
y shall make projections under subpar-
(a) and (b) for the current and

(b) Determinations of Future Contributions.—Any such actuarial projection of plan assets shall assume that—

(i) reasonably anticipated employer and employee contributions for the current and
A multiemployer plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the at-tainment of the benchmarks described in paragraph (3)(A). Such proposals shall include—

(1) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions in the year of adoption or reducing future benefit accruals), and

(2) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

(2) REQUESTS BY BARGAINING PARTIES. Upon the request of any bargaining party who—

(1) employs at least 5 percent of the active participants, or

(2) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(3) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare summaries and presentations, and provide additional information relevant to the funding improvement plan.

(b) Funding Rules for Multiemployer Plans in Endangered Status.—(1) In General.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to provide for funding improvement, by an amendment or an amendment adopting a funding improvement plan, to provide additional forms of benefits.

(2) Requirements.—(A) A multiemployer plan may not be amended so as to provide additional forms of benefits, except to the extent necessary to meet the benchmarks described in paragraph (3)(A).

(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

(ii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(3) Funding Improvement Plan.—(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to—

(1) increase in the plan’s funded percentage, and

(2) position of an accelerated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan’s benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(B) RECOMMENDATIONS BY PLAN SPONSOR.—(1) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

(i) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions in the year of adoption or reducing future benefit accruals), and

(ii) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

(2) REQUESTS BY BARGAINING PARTIES. Upon the request of any bargaining party who—

(1) represents an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(3) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare summaries and presentations, and provide additional information relevant to the funding improvement plan.

(4) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide additional forms of benefits.

(i) A reduction in the level of contributions for participants who are not in pay status.

(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.

(6) Benefit Restrictions PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

(A) REJECTIONS ON LUMP SUM DISTRIBUTIONS AND SIMILAR DISTRIBUTIONS.—The multiemployer plan may not be amended so as to provide additional forms of benefits.

(B) PROHIBITION ON BENEFIT INCREASES.—(1) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which vested nonforfeitable benefits become nonforfeitable under the plan may be adopted.

(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which—

(1) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

(ii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(3) Funding Rules for Multiemployer Plans in Critical Status.—(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to provide, under reasonable actuarial assumptions, for the attainment of the benchmarks described in section 104(b)(3) of such Act.

(B) RECOMMENDATIONS BY PLAN SPONSOR.—(1) IN GENERAL.—During the period of 120 days following the date on which a multiemployer plan is certified to be in critical status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in section 104(b)(3) of such Act.

(2) REQUESTS BY BARGAINING PARTIES. Upon the request of any bargaining party who—

(1) represents an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(3) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare summaries and presentations, and provide additional information relevant to the funding improvement plan.

(4) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

(A) REJECTIONS ON LUMP SUM DISTRIBUTIONS AND SIMILAR DISTRIBUTIONS.—The multiemployer plan may not be amended so as to provide additional forms of benefits.

(B) PROHIBITION ON BENEFIT INCREASES.—(1) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which vested nonforfeitable benefits become nonforfeitable under the plan may be adopted.

(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which—

(1) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

(ii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(3) Funding Rules for Multiemployer Plans in Critical Status.—(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in critical status under subsection (a)(1).

(B) RECOMMENDATIONS BY PLAN SPONSOR.—(1) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in critical status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

(i) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions in the year of adoption or reducing future benefit accruals), and

(ii) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

(2) REQUESTS BY BARGAINING PARTIES. Upon the request of any bargaining party who—

(1) represents an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(3) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare summaries and presentations, and provide additional information relevant to the funding improvement plan.
Any multiemployer plan which is in critical status under subparagraph (A) or (B) for a plan year shall be treated as in critical status also for the succeeding plan year.

(3) SUBSEQUENT DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

(i) the funded percentage of the plan is less than 80 percent, and

(ii) the sum of—

(I) the market value of plan assets, plus

(II) the present value of the reasonably anticipated active participant benefits and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

(i) the market value of plan assets, plus

(ii) the present value of the reasonably anticipated active participant benefits and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(C) A plan is described in this subparagraph if—

(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 80 percent, and

(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency during either of the following 3 plan years.

(4) REHABILITATION PLAN.—

(A) IN GENERAL.—A rehabilitation plan shall consist of—

(i) amendments to the plan providing (under reasonable actuarial assumptions) for measurement of benefit reductions in future benefit accruals or benefit terminations, or actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status under subparagraph (A) or (B); and

(ii) measures, agreed to by the bargaining parties, to provide funding relief, or

(iii) reasonable measures to forestall possible involvement (within the meaning of section 418F) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this section is the 18-year period beginning on the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the first date after the date of the adoption of the rehabilitation plan following the plan year in which the first date after the date of the certification as of which collective bargaining agreements covering one of the proposed schedules are in effect, or the first date after the date of the certification under subsection (a) as of which collective bargaining agreements covering one of the proposed schedules are in effect, or the date of the certification under subsection (a), whichever is later.

(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with any annual update of the funding value of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3) of the Employee Retirement and Income Security Act of 1974.

(5) DEVELOPMENT OF REHABILITATION PLAN.—

(A) PROPOSALS BY PLAN SPONSOR.—

(i) IN GENERAL.—Within 90 days after the date of the certification under subsection (a) that the plan is in critical status (or the date of withdrawal of such certification under section 431(b)(6)), the plan sponsor shall propose to all bargaining parties a rehabilitation plan or modification thereto consisting of—

(I) amendments to the plan providing (under reasonable actuarial assumptions) for measurement of benefit reductions in future benefit accruals or benefit terminations, or actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status under subparagraph (A) or (B); and

(II) any other action, or combination of actions, that the plan sponsor determines, in the plan sponsor’s discretion, are necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law during the rehabilitation period unless the plan amended to provide for an increase in contributions, the plan sponsor’s proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law during the rehabilitation period unless the plan sponsor’s proposals did not exceed 1 percent per plan year.

(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subparagraph.

(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the joint request of all bargaining parties, the plan sponsor shall propose to all bargaining parties—

(i) employs at least 5 percent of the active participants, or

(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall include among the proposed schedules such schedules of increased contributions in future benefit accruals as may be specified by the bargaining parties.

(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term ‘‘rehabilitation plan’’ for ‘‘funding improvement plan’’.

(7) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (6) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement and Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

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

(A) BARGAINING PARTY.—The term ‘‘bargaining party’’ means, in connection with a multiemployer plan, an employer who has an obligation to contribute under the plan, and

(B) EMPLOYEE ORGANIZATION.—For purposes of collective bargaining, represents plan participants employed by such an employer.

(2) CURRENT LIABILITY.—The term ‘‘current liability’’ means the funding provided such term in section 431(c)(6)(C).

(3) UNFUNDED CURRENT LIABILITY.—The term ‘‘unfunded current liability’’ means the excess of—

(A) the current liability of the plan, over

(B) the value of the plan’s assets determined under section 431(c)(2).

(4) FIXED PERCENT.—The term ‘‘funded percentage’’ means the percentage expressed as a ratio of which—

(A) the numerator of which is the value of the plan’s assets as determined under section 431(c)(2), and

(B) the denominator of which is the accrued liability of the plan.

(5) UNFUNDED VESTED BENEFITS.—The term ‘‘unfunded vested benefits’’ has the meaning provided in section 418(b)(7).
"(6) Accumulated Funding Deficiency.—The term ‘accumulated funding deficiency’ has the meaning provided such term in section 431(a).

"(7) Active Participant.—The term ‘active participant’ means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

"(8) Adjusted First, Second, and Third Segment Rates.—The term ‘adjusted first, second, and third segment rates’ means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(f)(2)(B).

"(9) Benefit.—Such person is entitled to any plan-related benefit, or a nonforfeitable right to benefits under the plan.

"(10) Committee.—The term ‘committee’ means such committee as provided in subpart A of part III of subchapter C of chapter 9 of subtitle B of title I of the Internal Revenue Code of 1986.

"(11) Early, Late, Normal, or Disability Retirement Benefit.—Such person is paid an early, late, normal, or disability retirement benefit.

"(12) Excess Benefit.—Such person is entitled to receive benefits in excess of the applicable benefit.

"(13) Executive Compensation.—The term ‘executive compensation’ means the adjusted first, second, and third segment rates which would be determined under section 430(f)(2)(C).

"(14) Final Average—"Average of Yields."—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

"Section 342. Additional funding rules for multiemployer plans in endangered status or critical status.

(c) Effective Date.—The amendments made by this section shall apply to plan years beginning after 2005.

TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS

SEC. 301. EXCESS INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) Amendments to Employee Retirement Income Security Act of 1974.—Subsection (B) of section 205(g)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as follows:

"(B) For purposes of subparagraph (A)—

"(i) The term ‘applicable mortality table’ means the mortality table specified for the plan year under section 303(f)(3).

"(ii) The term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(f)(2)(C) if—

"(I) section 303(f)(2)(D)(i) were applied by substituting ‘the yields’ for ‘a 3-year weighted average of yields’; and

"(II) the applicable percentage under section 303(f)(2)(G) were determined in accordance with the following table:

<table>
<thead>
<tr>
<th>In the case of plan years beginning in:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>20 percent</td>
</tr>
<tr>
<td>2007</td>
<td>40 percent</td>
</tr>
<tr>
<td>2008</td>
<td>60 percent</td>
</tr>
<tr>
<td>2009</td>
<td>80 percent</td>
</tr>
</tbody>
</table>

(b) Amendments to Internal Revenue Code of 1986.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 is amended by striking clause (ii) and inserting the following:

"(ii) Applicable Mortality Table.—For purposes of clause (i), the term ‘applicable mortality table’ means the mortality table specified for the plan year under section 430(f)(3).

"(iii) Applicable Interest Rate.—For purposes of clause (i), the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(f)(2)(B).

"(iv) Adjusted First, Second, and Third Segment Rates.—The adjusted first, second, and third segment rates which would be determined under section 430(f)(2)(C)—

"(I) section 430(f)(2)(D)(i) were applied by substituting ‘the yields’ for ‘a 3-year weighted average of yields’; and

"(II) the applicable percentage under section 430(f)(2)(G) were determined in accordance with the following table:

<table>
<thead>
<tr>
<th>In the case of plan years beginning in:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>20 percent</td>
</tr>
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<td>40 percent</td>
</tr>
<tr>
<td>2008</td>
<td>60 percent</td>
</tr>
<tr>
<td>2009</td>
<td>80 percent</td>
</tr>
</tbody>
</table>

(c) Effective Date.—The amendments made by this section shall apply to plan years beginning after 2005.

SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

(a) In General.—Subsection (ii) of section 415(b)(2)(E) of the Internal Revenue Code of 1986 is amended to read as follows:

"(ii) For purposes of determining the adjusted amount determined under subsection (B) for any benefit subject to section 417(e)(3), the interest rate assumption shall be not less than the greater of—

"(I) 5.5 percent;

"(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

"(III) the rate specified under the plan.

(b) Effective Date.—The amendment made by subsection (a) shall apply to distributions made in years beginning after 2005.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

SEC. 401. INCREASES IN PBGC PREMIUMS.


(A) in clause (ii), by striking "$9.00" and inserting "the greater of $9.00 or the adjusted amount determined under clause (ii)";

(B) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(C) by inserting after clause (ii) the following new clause:

"(iii) The adjusted amount determined under this clause is the product derived by multiplying $8.00 by the ratio of—

"(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

"(II) the national average wage index (as so defined) for 2006, with such product, if not a multiple of $1, being rounded to the nearest lower multiple of $1, and, to the nearest multiple of $1 in any other case.

"(iv) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2007 and before 2012—

"(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

<table>
<thead>
<tr>
<th>If the plan year begins in:</th>
<th>The amount is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$21.20</td>
</tr>
<tr>
<td>2009</td>
<td>$23.40</td>
</tr>
<tr>
<td>2010</td>
<td>$25.60</td>
</tr>
<tr>
<td>2011</td>
<td>$27.80</td>
</tr>
</tbody>
</table>

"(II) if the plan’s funding target attainment percentage for the plan year preceding such plan year was less than 100 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

<table>
<thead>
<tr>
<th>If the plan year begins in:</th>
<th>The amount is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$22.67</td>
</tr>
<tr>
<td>2009</td>
<td>$26.33</td>
</tr>
<tr>
<td>2010 or 2011</td>
<td>$28.00</td>
</tr>
</tbody>
</table>
unfunded benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and determined without regard to section 303(e)(1), and only vested benefits were taken into account.

"(II)项目的利率在未提取利益计划中用于补偿（I）中的条款所规定的利益，且在计划的首日支付，等于计划首年支付的计划 attendee的市场价值的50%。

"(I) it the value of plan's assets is of

"(ii) the liabilities to participants and beneficiaries under the plan.

"(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

"(A) The number of employers obligated to cover the plan as of the end of such plan year.

"(B) The number of participants under the plan on whose behalf no employer contribution was made in the plan due such plan year. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

"(b) Additional Information in Annual Actuarial Statement Regarding Plan Annual Projection Period.

"(1) In section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

"(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

"(ii) by inserting after paragraph (11) the following new paragraph:

"(A) shall apply with respect to premiums for

"(B) by adding after paragraph (11) the following new subsection:

"(B) by inserting after subsection (j) as subsection (j) as

"(A) the amendments made by paragraph

"(B) the amendments made by paragraph

"(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage of each of such 2 or more plan years as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

"(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage of each of such 2 or more plan years as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

"(D) It shall apply with respect to premiums for

"(1) by striking clause (ii) and inserting the following:

"(2) by adding after clause (vi) the following new clause:

"(A) The amendments made by paragraph

"(B) by adding after clause (v) the following new clause:

"(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.

"(viii) 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.

"(ix) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

"(i) the number of participants who are not in covered service under the plan at the end of the plan year and have a nonforfeitable right to benefits under the plan, to

"(ii) the number of participants who are in covered service under the plan.

"(c) Comparison of Monthly AVERAGE Value of Plan Assets to Projected Current Liabilities.

"(1) The amendments made by this section shall apply to plan years beginning after December 31, 2005.
30 days after the request in a form and manner prescribed in regulations of the Secretary, and "(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

"(3) LIMITATIONS.—In no case shall 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 for furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which may be charged to cover the advice, at a time reasonably contemplated by the advice, with respect to the plan in connection with the advice.

"(4) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 603. NOTICE TO PARTICIPANTS AND BENEFICIARIES WITH H11705

(a) IN GENERAL.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1320(c)(4)) is amended by inserting ‘‘or 101(1)’’ after ‘‘101(1)(v)’’.

(b) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by inserting ‘‘or 101(1)’’ after ‘‘101(1)(v)’’.

(c) REGULATIONS.—The Secretary shall prescribe regulations under section 101(j)(2) of such Act (29 U.S.C. 1132(j)(2)) in connection with the advice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge for furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which may be charged to cover the advice, at a time reasonably contemplated by the advice, with respect to the plan in connection with the advice.

"(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

"(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of any written or other material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary of the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth:

"(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 80 percent;

"(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans, the funding target attainment percentage of each of such plans for the plan year; and

"(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

"(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year;

"(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

"(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) VALUE OF PLAN ASSETS.—The term ‘value of plan assets’ means the value of plan assets, as determined under section 303(a)(2).

"(B) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term ‘funding target attainment percentage’ has the meaning provided in section 303(d)(2).

"(C) AGGREGATE FUNDING TARGET ATTAINMENT PERCENTAGE.—The term ‘aggregate funding targets attainment percentage’ with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which is—

"(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, 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.

"(D) AT-RISK STATUS.—The term ‘at-risk status’ means the meaning provided in section 303(h)(3).

"(3) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive such notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge for furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which may be charged to cover the advice, at a time reasonably contemplated by the advice, with respect to the plan in connection with the advice.

"(4) EFFECTIVE DATE.—The amendments made by this section shall apply to plans maintained by members of its controlled group as of the end of such plan year to participants and beneficiaries, which would be attributed to the plan as of the end of such plan year.

"(5) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVIDOR OF INVESTMENT ADVICE.

"(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

"(14)(A) Any transaction described in subsection (b) (B) in connection with the provision of investment advice described in section 3(2)(A)(ii), in any case in which—

"(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

"(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

"(iii) the requirements of subsection (g) are met in connection with the provision of the advice,

"(B) The transactions described in this subparagraph are the following:

"(i) the provision of the advice to the plan, participant, or beneficiary;

"(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

"(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee benefit plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property) pursuant to the advice.

"(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISER.

"(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(2)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with a sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

"(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may
(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any person is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property.

(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property.

(iii) of any limitation placed on the scope of the fiduciary advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property.

(iv) of any services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser.

(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(vi) that a recipient of the advice may separately choose to provide the services described in subparagraph (A) to provide, without charge, such currently accurate information required in such section and subsection (b)(1) to the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property (including any allegations of a State).

(3) Exemption condition on making required information available annually on request and in the event of material change.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails to provide, in connection with any sale, acquisition, or holding of a security or other property, such currently accurate information available, upon request and without charge, to the recipient of the advice or in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information in a form or manner reasonably contemporaneous to the material change in information.

(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF AFFILIATION.—The fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(5) Exemption for plan sponsor and certain other fiduciaries.—

(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be deemed to be subject to the requirements of this paragraph solely because of a material change to the information required to be provided under clauses (i) through (iv) of subparagraph (A) which meets the require-

(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraphs (1)(A)(i) through (iv) of subparagraph (A) which meets the require-

(C) Availability of plan assets for payment of advice.—Nothing in this part shall be construed to preclude the use of plan assets for expenses in providing investment advice referred to in section 3(21)(A)(ii).

(D) Continuance of prudent selection of adviser and periodic review.—Nothing in paragraph (A) shall be construed to preclude the use of plan assets for expenses in providing investment advice referred to in such section.

(E) The terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provi-

(F) Continuance of transactions allowed in connection with the sale, acquisition, or holding of a security or other property (including any allegations of a State).

(H) The term ‘affiliated’ means, with respect to a plan, an employee, agent, or registered representative of a person described in any of clauses (i) through (iv) who satisfies the re-

(I) An employee, agent, or registered representative of a person described in any of clauses (i) through (iv) who satisfies the re-

(J) By adding at the end the following new subsection—

(K) By adding at the end the following new subsection—

(L) By adding at the end the following new subsection—

(M) By adding at the end the following new subsection—

(N) By adding at the end the following new subsection—

(O) By adding at the end the following new subsection—

(P) By adding at the end the following new subsection—

(Q) By adding at the end the following new subsection—

(R) By adding at the end the following new subsection—

(S) By adding at the end the following new subsection—

(T) By adding at the end the following new subsection—

(U) By adding at the end the following new subsection—

(V) By adding at the end the following new subsection—

(W) By adding at the end the following new subsection—

(X) By adding at the end the following new subsection—

(Y) By adding at the end the following new subsection—

(Z) By adding at the end the following new subsection—

(a) Exemption from prohibited transactions.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(i) in paragraph (14), by striking “or” at the end; (ii) in paragraph (15), by striking the period at the end and inserting “; or”; and

(iii) by adding at the end the following new paragraph—

(b) Transactions allowed in connection with the sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

(c) The requirements of subsection (f)(7)(B) are met in connection with the provision of investment advice referred to in subsection (a) of such section (relating to other definitions and special rules) is amended by adding at the end the following new provision—

(d) Transactions allowable in connection with investment advice provided by fiduciary advisers.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following—

(i) the provision of the advice to the plan, participant, or beneficiary;

(ii) an arrangement for acquisition, acquisition, or holding of a security or other property (including any lending of money or other extension of credit

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associated with the sale, acquisition, or holding of a security or other property) pur-

suant to the advice; and

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary ad-

viser or an affiliate thereof (or any em-

ployee, agent, or registered representative of the fiduciary adviser or affiliate) in connec-

tion with the provision of the advice or in con-

nection with a sale, acquisition, or hold-

ing of a security or other property pursuant to

the advice.

(2) REQUIREMENTS RELATING TO PROVISION

OF INVESTMENT ADVICE BY FIDUCIARY ADVIS-

ERS.—The requirements of this subparagraph (referring to subparagraph (a)(10) of sec-

tion 404(a) of the Employee Retirement In-

come Security Act of 1974) are met in connec-

tion with the provision of investment advice referred to in subsection (e)(3)(B), provided

(a) in connection with the provision of the advice to a plan, participant, or benefici-

ary, the fiduciary adviser (or such fiduciary adviser or affiliate thereof) informs the par-

ticipant or beneficiary in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be suffi-

ciently accurate and comprehensive to rea-

sonably apprise such participants and bene-

ficiaries of the information required to be provided in the notification.

(b) (I) Each provision referred to in making re-

quired information available annually, on

request, and in the event of material

change.—The requirements of subparagraph (B) of subsection (d)(4) have been met in

connection with the initial or any sub-

sequent provision of advice described in sub-

paragraph (B) to the plan, participant, or

beneficiary, the fiduciary adviser fails to

provide, without charge, the following to

the plan, participant, or beneficiary, the

plan sponsor, or any other person who is a fidu-

ciary (other than a fiduciary adviser) in con-

nection with the provision of the advice or

in connection with the sale, acquisition, or holding of a security or other property or for purposes of investment of amounts held by the plan, if—

(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fidu-

ciary adviser provides to the recipient of the

advice, at a time reasonably contemporaneous with the initial provision of the advice (including notification by means of elec-

tronic communication),—

(A) all fees or other compensation relat-

ing to the advice that the fiduciary adviser

or any affiliate thereof is to receive (includ-

ing compensation provided by any third

party in connection with the provision of the

advice or in connection with the sale, ac-

quisition, or holding of the security or other

property,

(B) any material affiliation or contract-

ual relationship of the fiduciary adviser or

affiliates thereof in the security or other

property,

(C) any limitation placed on the scope of

the investment advice to be provided by

the fiduciary adviser with respect to any

such sale, acquisition, or holding of a secu-

rity or other property,

(D) of any material affiliation or contract-

ual relationship of the fiduciary adviser or

affiliates thereof in the security or other

property,

(E) of any material affiliation or contract-

ual relationship of the fiduciary adviser or

affiliates thereof in the security or other

property,

(F) a list of any plans or employee benefit

plans to which the fiduciary adviser is

affiliated or in which the fiduciary adviser

has an interest,

(G) the terms of the sale, acquisition, or

holding of the security or other property

are at least as favorable to the plan as an arm’s length transaction would be.

(ii) with respect to any such fee, com-

pensation, acquisition, or holding of the secu-

rity or other property, in accordance with all ap-

plicable laws and regulations.

(iii) of any material affiliation or contract-

ual relationship of the fiduciary adviser or

affiliates thereof in the security or other

property,

(iv) the compensation received by the fid-

uciary adviser and affiliates thereof in con-

nection with the sale, acquisition, or holding of the security or other property is reason-

able, and

(v) the terms of the sale, acquisition, or

holding of the security or other property are at least as favorable to the plan as an arm’s length transaction would be.

(iii) with respect to fees and other com-

pensation, acquisition, or holding of the secu-

rity or other property, in accordance with all ap-

plicable laws and regulations.

(iv) with respect to any such fee, com-

pensation, acquisition, or holding of the secu-

rity or other property, in accordance with all ap-

plicable laws and regulations.

(v) to make such currently accurate in-

formation available, upon request and with-

out charge, to the recipient of the advice, or

(vi) in the event of a material change to

the information described in subclauses (I)

through (IV) of subparagraph (B)(i), to pro-

vide, without charge, currently accurate in-

formation to the recipient of the advice at a time reasonably contemporaneous to the

material change.

(vi) MAINTENANCE FOR 6 YEARS OF EVIDENCE

OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided ad-

vice referred to in such subparagraph shall, for a period of not less than 6 years after

the provision of the advice, maintain any records necessary for determining whether the re-

quirements of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred if the records are lost or destroyed prior to the end of the 6-

year period due to circumstances beyond the control of the fiduciary adviser.

(3) EXEMPTION FOR PLAN SPONSOR AND

CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fidu-

ciary (other than a fiduciary adviser) shall not be treated as failing to meet the require-

ments of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or obtaining arrangements for the provision of the advice), if—

(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor and the fiduciary adviser for the provision by the fidu-

ciary adviser of investment advice re-

ferred to in such section,

(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

(iii) the terms of the arrangement include a writing by the plan sponsor and the fiduciary adviser that the fiduciary adviser is a fidu-

ciary of the plan with respect to the provi-

sion of the advice, and

(iv) the requirements of paragraph (2) of title I of the Employee Retirement In-

come Security Act of 1974 are met in connec-

tion with the provision of such advice.

(4) Definition of ‘‘Material Change’’ and ‘‘Material Affiliation’’ for Purposes of This Paragraph and Subsection (d)(16).—

(i) FIDUCIARY ADVISER.—The term ‘‘fidu-

ciary adviser’’ means, with respect to a plan, the fiduciary of the plan by reason of the provision of investment advice by the plan to a person or to a participant or beneficiary and who is a fiduciary of the investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business.

(ii) A bank or similar financial institution referred to in subsection (d)(4) or a savings association referred to in section 5(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1833(b)(1)), but only if the advice is provided through a trust department of the bank or entity that is an insured de-

pository institution associated with a fi-

duciary adviser or affiliate.

(iii) an insurance company qualified to do business under the laws of a State.

(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 5(b)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.) (substituting the entity for the investment adviser referred to in such section).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(h)(3)(B) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.

TITLE VII—DEDUCTION LIMITATIONS

SEC. 701. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to de-

duction for contributions paid to an em-

ployee’s 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 deter-

mined under subsection (o), and in the case of any other plan” after “subsection (l)(4)”, and

(2) by inserting at the end the following new subsection:

“(o) DEDUCTION LIMIT FOR SINGLE-EMP-

LOYER 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) ap-

plies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

(A) the greater of—

(i) 150 percent of the funding target applicable to the plan for such plan year, deter-

mined under section 430(e), plus

(ii) 150 percent of the funding target applicable to the plan for such plan year, deter-

mined under section 430(b), or

(B) the target rate times the average funded status of the plan for such plan year, deter-

mined under section 430(b), or
“(ii) in the case of a plan that is not in an at-risk status (as determined under section 430(g)), the sum of—

(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(e) (with regard to section 430(g), plus—

(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(b) (with regard to section 430(g), over—

(III) the value of the plan assets (determined under section 430(e) as of the valuation date of the plan).

(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 401(d) of such Act).

(4) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

(b) INCREASE IN DEDUCTION LIMIT FOR MULTIEMPLOYER PLANS.—Section 404(a)(7)(B) of such Code is amended to read as follows:—

“(D) INSURANCE CONTRACT PLANS.—For purposes of clause (i), the term ‘unfunded current liability’ means—

(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(e) as of the valuation date of the plan.

(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(b) (with regard to section 430(g), over—

(III) the value of the plan assets (determined under section 430(e) as of the valuation date of the plan).

(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 applied as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to noncoductible 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) (relating to limitation on deductible contributions) as does not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2005.

The SPEAKER pro tempore. In lieu of the amendments recommended by the Committee on Education and the Workforce and Ways and Means printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 109–346 is adopted.

The text of the amendment in the nature of a substitute as follows:

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 1. Short title and table of contents.

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

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

Sec. 101. Minimum funding standards.

Sec. 102. Funding rules for single-employer defined benefit pensions.

Sec. 103. Benefit limitations under single-employer plans.

Sec. 104. Technical and conforming amendments.

Sec. 105. Other amendments relating to prohibited transactions.

Sec. 106. Distributions during working re- tirement.

Sec. 107. Exercise of control over plan assets in connection with qualified changes in investment options.

Sec. 108. Clarification of fiduciary rules.


TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec. 401. Increases in PBGC premiums.

TITLE VI—INVESTMENT ADVICE

Sec. 601. Amendments to Employee Retirement Income Security Act of 1974

Sec. 602. Additional funding rules for multiemployer plans in endangered or critical status.

Sec. 603. Measures to forestall insolvency of multiemployer plans.

Sec. 604. Withdrawal liability reforms.

Sec. 605. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Sec. 606. Amendments to Internal Revenue Code of 1986

Sec. 607. Limitations on Puerto Rican exempt organizations.

Sec. 608. Additional disclosure requirements for section 401(k) plans.

Sec. 609. Amendments to section 408.

Sec. 610. Additional restrictions on tax-free treatment of employer annuity plans.

Sec. 611. Amendments to Employee Retirement Income Security Act of 1974

Sec. 612. Amendments to ERISA.

Sec. 613. Additional amendments to employee benefit plans.

Sec. 614. Additional provisions.

Sec. 615. Clarification of fiduciary rules.

Sec. 616. Tax incentive for employers to provide retirement plan information.

Sec. 617. SEC 303(b)

Sec. 618. Amendments to Internal Revenue Code of 1986

Sec. 619. Amendments to Employee Retirement Income Security Act of 1974

Sec. 620. Amendments to ERISA.

Sec. 621. Additional amendments to employee benefit plans.

Sec. 622. Additional provisions.

Sec. 623. Clarification of fiduciary rules.

Sec. 624. Tax incentive for employers to provide retirement plan information.

Sec. 625. SEC 303(b)
TITLE VIII—DEDUCTION LIMITATIONS
Sec. 801. Increase in deduction limits.
Sec. 802. Updating deduction rules for combination of plans.

TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS
Sec. 901. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.
Sec. 902. Saver’s credit.
Sec. 903. Increasing participation through automatic contribution arrangements.
Sec. 904. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.
Sec. 905. Waiver of 10 percent early withdrawal penalty on certain distributions of pension plans for public safety employees.
Sec. 906. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to and distributions from retirement plans.
Sec. 907. Direct payment of tax refunds to individual retirement plans.
Sec. 908. IRA rollovers for the disabled.
Sec. 909. Allow rollovers by nonservice beneficiaries of certain retirement plan distributions.

TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY
Sec. 1001. Treatment of annuity and life insurance contracts with a long-term care insurance feature.
Sec. 1002. Distributions from insured health and dependent care benefits in cafeteria plans and flexible spending arrangements.
Sec. 1003. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.

TITLE XI—GENERAL PROVISIONS
Sec. 1101. Provisions relating to plan amendments.

TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS
Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

SEC. 101. MINIMUM FUNDING STANDARDS.
(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 and 303 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052 through 1066) are repealed.
(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

“‘MINIMUM FUNDING STANDARDS’—
“‘SEC. 303. 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 are required under the terms of the plan, and
“(B) in the case of a multiemployer plan, the employees collectively, or the employer, 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 amounts required by subparagraphs (A) and (B) of section 412) shall be paid by the employer responsible for making contributions to or under the plan.
“(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—
“In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall jointly and severally be 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 employees contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and
“(II) application of the standard would be adverse to the interests of plan participants in the aggregate,
“the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) with respect to all or any portion of the minimum funding standard.
“(B) EXCEPTION FOR CERTAIN WAIVERS.
“(i) IN GENERAL.—If a waiver is
“(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 6102(p) of the Internal Revenue Code of 1986.
“(C) EXCEPTION FOR CERTAIN WAIVERS.—
“(1) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of
“(I) the aggregate unpaid minimum required contribution for the plan year and all preceding plan years, and
“(II) the present value of all waives amortization installments determined for the plan year and succeeding plan years under section 412(f)(2) which is less than $1,000,000.
“(2) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (1)(II) 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.
“(3) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—
“(A) in general.—The amount described in clause (1)(II) shall include any 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.

“(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) which a plan year waive of 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 (B), 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)), or a member of such sponsor’s controlled group (within the meaning of section 4001(a)(14)), 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)(15)), a member of such sponsor’s controlled group (within the meaning of section 4001(a)(14)), 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.—If a waiver is 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
“(III) 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 6102(p) of the Internal Revenue Code of 1986.
“(C) EXCEPTION FOR CERTAIN WAIVERS.—
“(1) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of
“(I) the aggregate unpaid minimum required contribution for the plan year and all preceding plan years, and
“(II) the present value of all waives amortization installments determined for the plan year and succeeding plan years under section 412(f)(2) which is less than $1,000,000.
“(2) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (1)(II) 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.
“(3) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—
“(A) in general.—The amount described in clause (1)(II) shall include any 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.
For purposes of subparagraph (A), no waiver may be granted under this subsection with respect to any plan for any plan year if the plan administrator thereof has 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.

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.

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, as determined under the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

The plan sponsor shall determine, with respect to the shortfall amortization installment for such plan year with respect to such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subsection (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

For purposes of this section, the shortfall amortization base of a plan for any plan year is the excess (if any) of—

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

(B) the sum of—

(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments for such plan year, each of the 6 preceding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year.

(ii) the present value (as so determined of the aggregate total of the waiver amortization installments for such plan year and the 6 preceding plan years which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

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

(A) the target normal cost of the plan for the plan year, over

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e).

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess.

(3) in any other case, the target normal cost of the plan for the plan year.

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purposes of clause (i), the term base of the plan for such plan year shall be zero.

(B) Transition rule.—

(1) In general.—In the case of a non-deficit plan year, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of the plan for the plan year, the applicable percentage of such funding target determined under the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>92 percent</td>
</tr>
<tr>
<td>2008</td>
<td>94 percent</td>
</tr>
<tr>
<td>2009</td>
<td>96 percent</td>
</tr>
<tr>
<td>2010</td>
<td>98 percent</td>
</tr>
</tbody>
</table>

(ii) Limitation.—Clause (i) shall not apply with respect to any plan year after 2007 unless the ratio (expressed as a percentage) which

(I) the value of plan assets for each preceding plan year after 2006 (as reduced under subsection (f)(4)(A)) bears to

(II) the value of plan assets for the plan year by the amount of the specified balance or a funding standard carryover balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

(2) Determination of excess assets, funding shortfall, and funding target attainment percentage.—

(i) In general.—For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance, as the case may be.

(C) Availability of balances in plan year for crediting against minimum required contribution.—

(A) In general.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in

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(A) In general.—In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(B) Transition rule.—

(1) In general.—In the case of a non-deficit plan year, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of the plan for the plan year, the applicable percentage of such funding target determined under the following table:

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(ii) Limitation.—Clause (i) shall not apply with respect to any plan year after 2007 unless the ratio (expressed as a percentage) which

(I) the value of plan assets for each preceding plan year after 2006 (as reduced under subsection (f)(4)(A)) bears to

(II) the value of plan assets for the plan year by the amount of the specified balance or a funding standard carryover balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

(2) Determination of excess assets, funding shortfall, and funding target attainment percentage.—

(i) In general.—For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance, as the case may be.
reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(2) Coordination between pre-funding balance and standard carryover balance.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

(6) Pre-funding balance.—

(A) In general.—A pre-funding balance maintained under subparagraph (C) shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraph (B) and adjusted further as provided in paragraph (8).

(B) Increases.—As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

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

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

(C) Decreases.—As of the valuation date for each plan year after 2007, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) any reduction in such balance elected under paragraph (5).

(7) Funding standard carryover balance.—

(A) In general.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) Balance.—The beginning balance of the funding standard carryover balance shall be the positive balance described in subparagraph (B)(ii).

(C) Decreases.—As of the valuation date for each plan year after 2007, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) any reduction in such balance elected under paragraph (5).

(8) Balances over balances.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the first day of such plan year and ending with the date the valuation date for the current plan year, properly taking into account all contributions, distributions, and other plan payments made during such period.

(9) Elections.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary of the Treasury.

(19) Valuation of Plan Assets and Liabilities.—

(A) 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.

(B) 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 any day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years.

(2) Averaging of values over more than 36 months.—For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

(3) Application of certain rules in determination of plan size.—For purposes of this paragraph—

(A) Plans 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 was reasonably expected to have on days during such first plan year.

(B) Predecessors.—If, any predecessor of such employer is a covered employer (as defined in section 6062) during any such period, subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(C) Authorization of use of actuarial value.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuing plan assets which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

(A) any method of providing for averaging of fair market values may not provide for averaging of such values over more than the 36-month period ending with the month which includes the plan year, or

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

(4) Accounting for contribution receipts.—For purposes of this section—

(A) Contributions for prior plan years taken into account.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution attributable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value, using the effective rate of interest for the plan for the preceding plan year as of the valuation date of the plan for such current plan year.

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

(5) Accounting for plan liabilities.—For purposes of this section—

(A) Liabilities taken into account for current plan year.—In determining the value of liabilities under a plan for a plan year, liabilities shall be increased to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

(B) Accruals during current plan year disregarded.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

(6) Actuarial assumptions and methods.—

(A) 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 referred to in clause (1) of subsection (c).

(B) Each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(C) Which, in combination, offer the actuaries 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 a plan’s liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) Interest rates for determining funding target.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

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

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

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

(2) Interest rates.—For purposes of this paragraph—

(A) First segment rate.—The term ‘first segment rate’ means, with respect to any plan for any plan year, 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.

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

(iii) Third segment rate.—The term ‘third segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

(iii) 3-year weighted average.—The term ‘3-year weighted average’ means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 30 percent, and the second year preceding such year is weighted 15 percent.

(E) Applicable month.—For purposes of this paragraph, the term ‘applicable month’ means, if any plan is in at-risk status for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month, if 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 shall publish on a monthly basis the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 4001(c)(3)(B)(i)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

(G) Transition rule.—

(i) Understanding 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 subsection, plus

(ii) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(I) (as in effect for plan years beginning in 2006) and the plan's funding target (as defined in section 4001(a)(14)) which are in effect for the succeeding plan year unless such Secretary, during the 180-day period beginning on the date of such submission, disapproves the rate and provides the reasons that such table fails to meet the requirements of clause (ii).

(II) the product of the rate determined under subparagraph (A)(i) and the assumptions set forth in the mortality table described in subparagraph (A) and the assumptions set forth in the mortality table described in section 302(b)(7)(C)(ii) (as in effect for plan years beginning in or after 2007 so as to be fully effective in the succeeding plan year unless such Secretary, during the 180-day period beginning on the date of such submission, disapproves the rate and provides the reasons that such table fails to meet the requirements of clause (ii).)

(III) The loading factor shall be treated as in effect for the succeeding plan year unless such Secretary, during the 180-day period beginning on the date of such submission, disapproves the rate and provides the reasons that such table fails to meet the requirements of clause (ii).

(G) Transition rule.—

(i) Application.—Under regulations of the Secretary of the Treasury, any difference in present value resulting from the difference in the assumptions as set forth in the mortality table specified in subparagraph (A) and the assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

(4) Probability of benefit payments in the form of lump sums or other optional forms.—For purposes of determining any present value or making any computation under this section, there shall be taken into account

(A) the probability that future benefit payments under the plan will be made in the form of lump sums or other optional forms as will result in the highest present value or making any computation under this section, there shall be taken into account

(i) the probability that future benefit payments under the plan will be made in the form of lump sums or other optional forms as will result in the highest present value of such payments under the actuarial assumptions described in subsection (h), the supplemental actuarial assumptions described in subparagraph (C), and

(ii) the probability that future benefit payments under the plan will be made in the form of lump sums or other optional forms as will result in the highest present value of such payments under the actuarial assumptions described in subsection (h), the supplemental actuarial assumptions described in subparagraph (C), and

(B) the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining the cost of the plan for such plan year shall be less than 60 percent.

(4) Transition between applicable funding targets and between applicable target normal costs.—

(A) In general.—In any case in which a plan is in at-risk status for a plan year, the amount determined under this section with regard to this subsection, plus

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

(B) Plans to which paragraph applies.—This paragraph shall apply to a plan only if—

(i) the plan is a single-employer plan to which title IV applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as section 4001(a)(14)(A)(i) (as defined in section 4001(a)(14)) which the most recent year is weighted 50 percent, or that exceeds $5,000,000 and that.

(iii) the amount determined under this section with regard to this subsection, plus

(iv) the amount of unfunded vested benefits (as defined in section 4001(a)(14)) which the most recent year is weighted 50 percent, or that exceeds $5,000,000 and that.

(iii) the amount of unfunded vested benefits (as defined in section 4001(a)(14)) which the most recent year is weighted 50 percent, or that exceeds $5,000,000 and that.

(iv) the amount of unfunded vested benefits (as defined in section 4001(a)(14)) which the most recent year is weighted 50 percent, or that exceeds $5,000,000 and that.

(v) the amount of unfunded vested benefits (as defined in section 4001(a)(14)) which the most recent year is weighted 50 percent, or that exceeds $5,000,000 and that.

(vi) the amount of unfunded vested benefits (as defined in section 4001(a)(14)) which the most recent year is weighted 50 percent, or that exceeds $5,000,000 and that.
“(1) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

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

“(2) INTEREST.—Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

“(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNFUNDDED PLANS.—

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

“(C) 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.

“(D) NUMER 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:

<table>
<thead>
<tr>
<th>In the case of the following required installment</th>
<th>The due date is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st month of such plan year</td>
<td>April 15</td>
</tr>
<tr>
<td>2nd month of such plan year</td>
<td>July 15</td>
</tr>
<tr>
<td>3rd month of such plan year</td>
<td>October 15</td>
</tr>
<tr>
<td>4th month of such plan year</td>
<td>January 15 of the following year</td>
</tr>
</tbody>
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“(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) 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) the required annual payment for any 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 YEAR INSTALLMENTS.—

“(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for each reference in this paragraph, to 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.

“(F) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY INSTALLMENTS.—

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

“(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (ii)) if 100% or more of the amount required to be paid under such paragraph for the year in question is required to be paid by the due date for such installment.

“(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 any actual or estimated plans for such quarter which is less than 100 percent) 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 (if any) of such installment over—

“(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 100 percent of the 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 clause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements for each of the 3 preceding quarters 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 due to circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those non-recurrent conditions.

“(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 other assets as specified by the Secretary of the Treasury in regulations.

“(vi) QUARTER.—The term ‘quarterm’ 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.

“(G) IMPOSITION OF LIENS WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS OCCURS.—

“(A) IN GENERAL.—In the case of a plan to which this subsection applies (as provided under paragraph (2), if—

“(i) any person fails to make a contribution payment required under section 302 and this section before the due date for such payment, and

“(ii) 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.

“(B) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (b)) is less than 100 percent. This subsection shall not apply to any plan to which section 4021 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

“(C) 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.

“(D) 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 a tax lien and owing to the United States and the Secretary of the Treasury in amounts and under the rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with

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respective 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 by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

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

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

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

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

“(D) 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 be treated for purposes of this section, be treated as assets in the plan.

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

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

“(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

(a) Prohibition of Shutdown Benefits and Other Unpredictable Contingent Event Benefits Under Single-Employer Plans.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

“(g) BASED LIMITATION ON SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

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

“(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY ON BENEFITS.

“(2) DUE DATE; REQUIRED INSTALLMENT.

“(3) FUNDING-BASED LIMITS ON BENEFITS AND BONUSES UNDER SINGLE-EMPLOYER PLANS.

“(A) IN GENERAL.—No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

“(a) less than 80 percent, or

“(b) would be less than 80 percent taking into account such amendment.

“For purposes of this subparagraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided for by section 303, an increase in the funding target attainment percentage as of the valuation date of the plan for such plan year, and the amount required to be contributed under such section (including any minimum required contribution under section 303) as equal to—

“(A) less than 80 percent, or

“(B) would be less than 80 percent taking into account such amendment.

“(2) DUE DATE; REQUIRED INSTALLMENT.

“(A) IN GENERAL.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for such plan year was not more than 10 percentage points less than the funding target attainment percentage as of the valuation date of the plan for such preceding plan year, the funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of all other subsections, to be the valuation date of the plan for the current plan year.

“(B) EXEMPTION.—A rule similar to the rule of subparagraph (A) shall apply to a plan with respect to such preceding plan year.

“(C) PROHIBITION OF UNDERFUNDING AFTER 10TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

“(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than such percentage, which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

“(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year, until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be deemed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

“(D) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a provision under paragraph (2) of a payment described in paragraph (2)(A) or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such provision or cessation occurs after the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

“(E) DEFINED BENEFIT PLAN.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for such plan year is more than 80 percent, all future benefit accruals under the plan shall cease as of such date.
shall not apply to a prohibition or cessation required by reason of paragraph (5).

(7) Funding target attainment percentage.—
(A) In general.—For purposes of this subsection, the term ‘funding target attainment percentage’ means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—
(i) the value of plan assets for the plan year (as determined under section 303(g)) is less than the pre-funding balance minus the funding standard carryover balance (within the meaning of section 303(l)), bears to
(ii) the funding target of the plan for the plan year (as determined under section 303(l)(1), but without regard to section 303(l)(1)(B)).

(B) Application to plans which are fully funded without regard to reductions for funding balances.—
(1) In general.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to paragraph (1)(B)) by such amount (in a manner consistent with the requirements of section 303(f)(5)(B)) by such amount applicable to plan years beginning after 2006 and before 2011 by substituting for the funding target attainment percentage (as defined in section 303(l)(1)) the term ‘funding target attainment percentage’ therefor, for any plan year, the ratio (expressed as a percentage) which—
(i) the value of plan assets for the plan year (as determined under section 303(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 303(l)), bears to
(ii) the funding target of the plan for the plan year (as determined under section 303(l)(1), but without regard to section 303(l)(1)(B)).

(C) Limitation.—Clause (i) shall not apply with respect to any plan year unless the funding target attainment percentage (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance), subparagraph (A) shall be applied without regard to such reduction.

(2) Transition rule.—Clause (i) shall be applied to plan years beginning after 2006 and before 2011 by substituting for ‘100 percent’ the applicable percentage determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Plan Year</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>92 percent</td>
</tr>
<tr>
<td>2008</td>
<td>94 percent</td>
</tr>
<tr>
<td>2009</td>
<td>96 percent</td>
</tr>
<tr>
<td>2010</td>
<td>98 percent</td>
</tr>
</tbody>
</table>

(3) Limitation.—Clause (ii) shall not apply with respect to any plan year unless the funding target attainment percentage (determined without regard to this subparagraph and with respect to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance) of the plan for each preceding plan year determined under subparagraph (A)(i) (for the pre-funding balance and the funding standard carryover balance of the plan for such preceding plan year determined under clause (ii)).

(4) Dismantled reduction of funding balances.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers—

(A) In general.—In any case in which a benefit limitation under paragraph (1), (2), or (3) would (but for this paragraph and determined without regard to paragraph (1)(B)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this Act as having made an election under section 303(f)(5)(D) to reduce the balance of the pre-funding balance and the funding standard carryover balance for the plan year (in a manner consistent with the requirements of section 303(f)(5)(B)) by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

(B) Exception for insufficient funding balances.—Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.

Sec. 104. Technical and conforming amendments.—

(1) in section 101(d)(3), by striking ‘‘section 302(e)(2)’’ and inserting ‘‘section 303(j)(2)(B)’’;

(2) in section 101(d)(5)(B), by striking clause (1) and inserting the following:

‘‘(1) a statement as to whether—

‘‘(i) in the case of a defined benefit plan which is a single-employer plan, the plan’s funded current liability percentage (as defined in section 303(l)(2)), or

‘‘(ii) in the case of a defined benefit plan which is a multiemployer plan, the plan’s funded current liability percentage (as defined in section 305(d)(2)), is at least 100 percent (and, if not, the actual percentage);’’;

(3) in section 103(b)(8)(B), by striking ‘‘the requirements of section 302(c)(8)’’ and inserting ‘‘the applicable requirements of sections 303(b) and 304(c)(3)’’;

(4) in section 158(d), by striking paragraph (1) and inserting the following:

‘‘(1) If the current value of the assets of the plan is less than 70 percent of—

‘‘(A) in the case of a defined benefit plan which is a single-employer plan, the funding target (as defined in section 303(d)(1)) of the plan, or

‘‘(B) in the case of a defined benefit plan which is a multiemployer plan, the current liability (as defined in section 304(c)(6)(D)) under the plan, the percentage which such value is of the amount described in subparagraph (A) or (B)’’;

(5) in section 203(a)(3)(C), by striking ‘‘section 302(c)(8)’’ and inserting ‘‘section 302(d)(2)’’;

(6) in section 204(g)(1), by striking ‘‘section 302(c)(8)’’ and inserting ‘‘section 302(d)(2)’’;

(7) in section 204(h)(2)(B), by striking ‘‘section 302(c)(8)’’ and inserting ‘‘section 302(d)(2)’’;

(8) in section 204(i)(3), by striking ‘‘funded current liability percentage (within the meaning of section 302(d)(8) of this Act)’’ and inserting ‘‘funding target attainment percentage (as defined in section 303(d)(2))’’;

(9) in section 204(l)(4), by striking ‘‘section 302(c)(11)(A), without regard to section 302(c)(11)(B)’’ and inserting ‘‘section 302(b)(11), without regard to section 302(b)(2)’’;

(10) in section 206(e)(1), by striking ‘‘section 302(d)’’ and inserting ‘‘section 303(4)(b)’’ and inserting ‘‘section 303(4)(b)’’;

(11) in section 206(e)(3), by striking ‘‘section 302(e)’’ by reason of paragraph (5)(A) thereof and inserting ‘‘section 303(j)(3) by reason of section 303(j)(4)(A)’’; and

(12) in sections 101(e)(3), 403(c)(1), and 406(b)(15), by striking ‘‘American Jobs Creation Act of 2004’’ and inserting ‘‘Pension Protection Act of 2005’’;

(b) Miscellaneous amendments to title IV.—Title IV of such Act is amended—

(1) in section 401(k), by striking ‘‘29 U.S.C. 1301(a)(13), by striking ‘‘302(c)(11)(A)’’ and inserting ‘‘302(c)(11)(B)’’ and inserting ‘‘412(c)(11)(A)’’ and inserting ‘‘412(c)(11)(B)’’ and inserting ‘‘302(c)(2), and by striking clause (1) and inserting clause (2)’’;

(2) in section 403(e)(1) (29 U.S.C. 1301(e)(1)), by striking ‘‘302(c)(11)(A) and (B)’’ and inserting ‘‘302(c)(11)(A) and (B)’’; and

(3) in section 404(c)(1), by striking ‘‘406(b)(13), by striking ‘‘412(c)(11)(B)’’ and inserting ‘‘412(c)(11)(A)’’ and inserting ‘‘412(c)(11)(B)’’ and inserting ‘‘412(c)(11)(B)’’ and inserting ‘‘430(k)(1)(A) and (B)’’.

Sec. 105. Repeal of intermediate funding rule.—
(a) In general.—Section 303(j)(4)(E)(i) of such Act is amended to read as follows:

‘‘(E) Special rule for 2007.—In purposes of applying paragraph (5) of section 206(h) of such Act (as added by this section) to current plan years (within the meaning of such paragraph) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the funding target attainment percentage of the plan for the preceding year. For purposes of the preceding sentence, the term ‘‘modified funded current liability percentage’’ means the funded current liability percentage (as defined in section 302(l)(8) of such Act), reduced as described in subparagraph (B) the plan in the case of a plan with a funded current liability percentage (as so defined and before such reduction) which is less than 100 percent.
(3) in section 401(h)(2) (29 U.S.C. 1101(h)(2)), by striking “§ 302(c)(1)(A) and (B)” and inserting “§ 303(k)(1)(A) and (B)” and by striking “(i) an employer is (or in the case of a multiemployer plan)” and inserting “(i) an employer is (or in the case of a multiemployer plan)”;

(4) in section 401(i) (29 U.S.C. 1101(i)), by striking “to which” and all that follows and inserting “for any plan year for which the plan’s funding percentage (as defined in section 303(d)(2)) is at least 90 percent.”;

(5) in section 402(c)(1) (29 U.S.C. 1102(c)(1)), by striking “plan members” and inserting “plan participants”;

(6) in section 403(b)(1) (29 U.S.C. 1103(b)(1)), by striking “a defined benefit plan, a multiemployer plan, a defined contribution plan, a profit-sharing plan” and inserting “a defined benefit plan, a profit-sharing plan, a stock bonus plan, or a plan maintained by a governmental employer (other than a plan maintained by an educational institution)”;

(7) in section 424(a)(1)(B) (29 U.S.C. 1432(a)(1)(B)), by striking “§ 412(c)(1) and” and inserting “§ 430(c)(2) and”; and

(8) in section 426(c)(1) (29 U.S.C. 1432(c)(1)), by striking “§ 412(c)(1)” and inserting “§ 430(c)(2)”.

SEC. 111. MINIMUM FUNDING STANDARDS.

(a) New Minimum Funding Standards. Section 430 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

“SEC. 430. 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) the employer is operating at an economic loss,

(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 deficiency which is attributable to any additional contributions for any period (including the plan year in which the termination date occurs or for any previous plan year), or

(B) in the case of a single-employer plan, the sum of the total of the amortization installments for any period (including the plan year in which the termination date occurs or for any previous plan year), or

(B) in the case of a single-employer plan, the sum of the total of the amortization installments for any period (including the plan year in which the termination date occurs or for any previous plan year); and

(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) the employer is operating at an economic loss,

(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 deficiency which is attributable to any additional contributions for any period (including the plan year in which the termination date occurs or for any previous plan year), or

(B) in the case of a single-employer plan, the sum of the outstanding balance of the accumulated funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 414(c) of such Code (if any); and

(3) in the case of a multiemployer plan, the outstanding balance of the amount of decreases in the minimum funding standard allowed under the plan such date under section 304(d) of this Act or section 431(d) of such Code (if any); and

(B) in the case of a single-employer plan, the sum of the total of the amortization installments for any period (including the plan year in which the termination date occurs or for any previous plan year) which is attributable to any additional contributions for any period (including the plan year in which the termination date occurs or for any previous plan year) which is attributable to any additional contributions for any period (including the plan year in which the termination date occurs or for any previous plan year); and

(2) Joint and Several Liability Where Employer Member of Controlled Group.—In the case of a defined benefit plan which is not a multiemployer plan, the employer referred to in paragraph (1) (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(3) 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) (which, for purposes of this subparagraph, shall include (but is not limited to) whether or not

(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 the amount shall be amortized as required under section 431(b)(2)(C).

(C) Waiver of Amortized Portion Not Allowed.—The Secretary may not waive subparagraph (A) of this section to the extent that an amortized portion of such plan is entitled to a multiemployer plan shall include (but shall not be limited to) whether or not

(D) Effective Date.—The amendments made by this section shall apply to plan years beginning after 2006.

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 112. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

(A) New Minimum Funding Standards. Section 424 of such Code (relating to temporary variances) is amended to read as follows:

“SEC. 424. TEMPORARY VARIANCES.

(1) In general.—No portion of the minimum funding standard shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(c)(3).

(B) Effects of Waiver.—If a waiver is granted under subparagraph (A) for any plan year—

“(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(c)(3).

(C) Failure to Meet Minimum Funding Standard.—If a plan year.

(B) 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,

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

(C) Waived Funding Deficiency.—For purposes of this section and part III of this subchapter, the term ‘waived funding deficiency’ means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

(4) Security for Waivers for Single-Employer Plans, Consultations.—

(A) Security May Be Required.—

(B) General.—If the Secretary determines that a security provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) Special Rules.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).
“(B) Consultation with the Pension Benefit Guaranty Corporation.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under subsection (b) 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 with respect to such application, and

(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) represented by participants in the plan which are submitted in writing to the Secretary in connection with such application.

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

(C) Exception for Certain Waivers.—

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

(I) the aggregate unpaid minimum required contribution (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years has been 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 a plan amendment described in clause (i)(I) shall include any increase in such amount which would result if a waiver under this subsection or an extension of time under section 433(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the requirements of this paragraph, any of the following—

(I) any comments of the Corporation with respect to such application, and

(ii) any waiver or modification of such plan amendment, extension of time, or 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 433(d) is in effect with respect to the plan or, if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the requirements of this paragraph, any of the following—

(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part 1 of subchapter D, chapter 1.

(ii) Change in Method of Amortization.—If the funding method, the valuation date, or a defined benefit plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

(C) 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 and before the filing date of the plan year, or

(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 benefit 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, fails to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 433(d)) is unavailable or inappropriate.

(3) Controlled Group.—For purposes of this section, the term ‘controlled group’ means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(e) Plans to Which Section Applies.—

(1) in general.—Except as provided in paragraph (2), this section applies to any plan if, for any plan year beginning after December 31, 2006,

(A) such plan included a trust which qualified (or was deemed to qualify by the Secretary to have qualified) under section 401(a), or

(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 401(a).

(2) Exceptions.—This section shall not apply to—

(A) any profit-sharing or stock bonus plan,

(B) any insurance contract plan described in paragraph (3),

(C) any governmental plan (within the meaning of section 414(d)),

(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 414(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 payments under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

(3) Certain Insurance Contract Plans.—A plan is described in this paragraph if—

(A) the plan is funded exclusively by the purchase of individual insurance contracts,

(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and

(C) all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

(D) premiums paid for the plan year, and all prior plan years, under such contracts have been subject to a 2% interest rate at any time during the plan year, and

(F) no policy loans are outstanding at any time during the plan year.

A plan described exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.

(b) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.

(a) in General.—Subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to defined benefit plans) is amended by adding at the end the following new part:


Sec. 410. Minimum Funding Standards

Subsection (a) of section 410 of the Internal Revenue Code of 1986 (relating to funding standards for single-employer plans) is amended by inserting after the period the following

(2) any increase in any required contribution (within the meaning of section 401(a)(21) of the Internal Revenue Code of 1986) during the plan year shall be funded by the plan sponsor (or, in the case of a multiemployer plan, by the applicable employer plan) during the plan year.

(b) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.
PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.

(a) Minimum Required Contribution.—For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term minimum required contribution means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

(i) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e),

(ii) in any other case, the target normal cost of the plan for the plan year.

(b) Target Normal Cost.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term target normal cost means, with respect to any plan year for the plan year reduced by such excess; or

(3) any other case, the target normal cost of the plan for the plan year.

(c) Shortfall Amortization Charge.—

(i) 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.

(ii) Minimum Requirement.—In the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of a plan for the plan year, the applicable percentage of such funding target determined under the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>92 percent</td>
</tr>
<tr>
<td>2008</td>
<td>94 percent</td>
</tr>
<tr>
<td>2009</td>
<td>96 percent</td>
</tr>
</tbody>
</table>

(iii) Limitation.—Clause (i) shall not apply with respect to any plan year after 2007 unless the ratio (expressed as a percentage) which—

(A) the value of plan assets for each preceding plan year (determined without regard to subsection (i)(1)), is not less than the applicable percentage with respect to such preceding plan year determined under clause (i)(1),

(B) the funding target of the plan for such preceding plan year (determined without regard to subsection (i)(1)), bears to

(iv) Non-Deficit Reduction Plan.—For purposes of clause (i), the term non-deficit reduction plan means any plan—

(A) which is an early deemed amortization upon attainment of funding target,

(B) 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 aggregate total of the waiver amortization bases for all preceding plan years and each succeeding plan year is the aggregate total of the waiver amortization bases for each of the 5 preceding plan years.

(v) Waiver Amortization Installment.—The plan sponsor shall determine, with respect to each waiver amortization installment for the plan year beginning with the succeeding plan year, the percentage of such waiver amortization installment attributable to services performed in a preceding plan year which 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.

(b) Funded Status.—The plan sponsor shall determine, with respect to the funded status of the plan for any plan year, the funded status of the plan for the plan year beginning with the succeeding plan year, and the funded status of the plan for each of the 5 succeeding plan years.

(c) Shortfall Amortization Base.—For purposes of this section, the shortfall amortization base of a plan for a plan year is 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), to the plan for the plan year.

Sec. 440. Early Deemed Amortization Upon Attainment of Funding Target.

(a) In General.—In the case of a defined benefit plan which is not a multiemployer plan, the term early deemed amortization upon attainment of funding target means, with respect to any plan year, the aggregate total of the waiver amortization bases for all preceding plan years and each succeeding plan year is the aggregate total of the waiver amortization bases for each of the 5 preceding plan years.

(b) Waiver Amortization Installment.—The plan sponsor shall determine, with respect to each waiver amortization installment for the plan year beginning with the succeeding plan year, the percentage of such waiver amortization installment attributable to services performed in a preceding plan year which 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.

Sec. 441. Reduction of Minimum Required Contribution by Pre-Funding Balance and Funding Standard Carryover Balance.

(a) Election to Maintain Balances.—

(A) Pre-Funding Balance.—The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a pre-funding balance.

(B) Funding Standard Carryover Balance.—

(1) In General.—In the case of a defined benefit plan which is not a multiemployer plan described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(2) Plans Maintaining Funding Standard Account in 2006.—A plan is described in this clause if the plan—
“(I) was in effect for a plan year beginning in 2006, and
“(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

“(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

“(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2),

“(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) ELECTIONS AGAINST MINIMUM REQUIRED CONTRIBUTION.—

“(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

“(B) Coordination with pre-funding balance and funding standard carryover balance.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

“(C) Treatment of plan assets.

“(i) the aggregate total of employer contributions to the plan for the preceding plan year (expressed as a percentage) which—

“(I) the value of plan assets for the preceding plan year (as determined under paragraph (4)(C)), bears to

“(II) the remaining funding balance and a funding standard carryover balance for the plan year.

“(ii) the funding standard carryover balance for any plan year, as the case may be.

“(3) BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution for any plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by such amount credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account subparagraphs (B) and (C).

“(4) DECREASES.

“(a) Coordination with pre-funding balance and funding standard carryover balance.-To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution for any plan year (not in excess of such minimum required contribution). The plan sponsor may reduce the minimum required contribution for the plan year by any amount not in excess of the excess amount (if any) of—

“(I) the aggregate total of employer contributions to the plan for the preceding plan year, over

“(II) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date of the plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending with the date immediately preceding the valuation date for the current plan year, determined with no regard to any election under paragraph (1), but not below zero).

“(b) The plan sponsor shall, in accordance with regulations prescribed by the Secretary, reduce the minimum required contribution as follows—

“(i) the amount of such balance credited under paragraph (2), and

“(ii) any reduction in such balance elected under paragraph (3).

“(a) Except as provided in subparagraph (B), the amount of any plan has a funding standard carryover balance of a plan as the valuation date (before applying any decrease or increase) (6) or (7), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance so as to reflect the rate of return (as determined with no regard to any election under section (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

“(b) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

“(c) Valuation of Plan Assets and Liabilities.—

“(1) Timing of determinations.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

“(2) Valuation date.—For purposes of this section—

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

“(B) Exception for small plans.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer’s controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

“(C) Application of certain rules in determination of plan size.—For purposes of this paragraph—

“(a) 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 normally 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.

“(iii) Authorization of use of actuarial value.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

“(A) any such method providing for averaging of such values over more than the 36-month period ending with the month which includes the valuation date, and

“(B) with respect to such method for determining the value of plan assets which, at any time, is lower than 90 percent of
(i) the case of liabilities reasonably determined to be payable during the 15-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month, and
(ii) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and
(iii) in the case of liabilities reasonably determined to be payable after the period described in clauses (i) and (ii), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33 1/3 percent for plan years beginning in 2007 and 66 2/3 percent for plan years beginning in 2008.

(iii) NEW PLANS INELIGIBLE.—Clause (i) shall not apply to any plan if the plan year of the plan begins after December 31, 2006.

(iv) MORTALITY TABLE.—In general.—Except as provided in subparagraph (B), the mortality table used in determining any present value or making any computation under this section shall be the mortality table described in subparagraph (A), Scale AA published by the Society of Actuaries (as in effect on the date of the enactment of the Pension Protection Act of 2005), and shall be treated as in effect on the first day of such plan year.

(B) SUBSTITUTE MORTALITY TABLE.—In general.—Upon request by the plan sponsor and approval by the Secretary for a period not to exceed 5 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall be treated as in effect on the first day of such plan year if the plan actuary determines at any time that such table does not meet the requirements of subsections (A) and (B) of this section.

(C) TRANSITION RULE.—Under regulations of the Secretary, any present value resulting from the difference in the assumptions as set forth in the mortality table specified in subparagraph (A) and the assumptions as set forth in the mortality table described in section 412(b)(7) that is in effect for plan years beginning in 2006 shall be phased in ratably over the first 5 plan years beginning in or after 2007 so as to be effective for the fifth plan year. The preceding sentence shall not apply to any plan if the plan year of the plan begins after December 31, 2006.

(D) 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 the experience of the plan and the mortality table that most accurately reflects the actual experience of the pension plan and projected trends in such experience, and

(E) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as approved for the purposes of this section at the election of the plan sponsor and provided the Secretary does not object to such table within 90 days of receipt of such table. The preceding sentence shall not apply to any plan if the plan year of the plan begins after December 31, 2006.

(F) ACCOUNTING FOR CONTRIBUTIONS.—For purposes of determining the present value of liabilities under a plan for a plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

(G) TRANSITION RULE.—For purposes of this section, the term ‘corporate bond yield curve’ means, with respect to any month, a yield curve which is prescribed by the Secretary for such month, which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

(H) 3-YEAR WEIGHTED AVERAGE.—The term ‘3-year weighted average’ means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

(I) APPLICABLE MONTH.—For purposes of this paragraph, the ‘applicable month’ means, with respect to any plan year, the month which includes the valuation date of such plan for such plan year or, if there is no such valuation date, the month at the election of the plan sponsor, of any 4 months which precede such month. Any election made under this subparagraph shall be irrevocable unless the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

(J) ELECTION.—The term ‘election’ means an election made by the plan sponsor and approval by the Secretary for a period not to exceed 5 years. A mortality table described in this clause shall be treated as in effect on the first day of such plan year if the plan actuary determines at any time that such table does not meet the requirements of clause (ii).
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) SPECIAL RULES FOR 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—

(ii) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies.

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

(iv) the change in assumptions (determined without 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.$0,000,000 and is 5 percent or more of the funding target of the plan before such change.

"(1) SPECIAL RULES FOR AT-RISK PLANS.—

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

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

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

(ii) the loading factor determined under subparagraph (C).

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

"(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph shall be 10 percent.

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

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

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

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

"(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the plan is in at-risk 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 subsection without regard to this subsection.

"(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the ‘transition percentage’ for a plan year is equal to the excess of

(ii) the number of plan years during the period beginning with the plan year referred to in such clause and ending with the plan year described in paragraph (A) over

(i) 20 percent, by

(ii) the number of plan years during the period beginning with the plan year described in paragraph (A).

(5) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

"(A) IN GENERAL.—For purposes of this subparagraph, the minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

"(B) INTEREST.—Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

(6) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

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

(i) the interest rate in effect under section 1274 for the 1st month of such plan year, over

(ii) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), over

(iii) 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.—For purposes of this paragraph—

(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.
(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 required under any installment 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, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member).”

(2) Plans to Which Subsection Applies.—

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent, except that this subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

(3) Amount of Lien.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

(4) Notice of Failure.—

(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 4086 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 which such lien arises.

(D) 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 controlling sponsor (or any member of the controlled group of the contributing sponsor).

(E) Definitions.—For purposes of this subsection—

(A) Contribution Payment.—The term ‘contribution payment’ means, in connection with a plan, a payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (1).

(B) Due Date for 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 plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply, the due date shall be the date such payment is required to be made under section 430.

(C) Controlled Group.—The term ‘controlled group’ means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

(D) Qualified Transfers to Health Benefits Account.—In the case of a qualified transfer (as defined in section 420), any asset added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeding $1,000,000, then shall be a lien in favor of the plan in the amount determined under paragraph (5) pursuant to rights and 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.

(E) Filing of Lien.—

A person committing a failure described in paragraph (1) shall file a notice of such failure with the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the controlling sponsor (or any member of the controlled group of the contributing sponsor).


(a) In General.—

(1) Prohibited Plans.—

In the case of a qualified Multiemployer Plan that is a single-employer plan, any prohibited plan (as defined in section 4013) shall cease to apply with respect to such plan for purposes of section 4021 of the Employee Retirement Income Security Act of 1974.

(2) Minimum Funding Standards Under Single-Employer Plans.—

Sec. 430. Minimum funding standards for single-employer defined benefit pension plans.

Sec. 436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.

(b) Effective Date.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

SUBPART A.—Minimum Funding Standards for Pension Plans

(a) In General.—

(1) Prohibited Plans.—

In the case of a qualified Multiemployer Plan that is a single-employer plan, any prohibited plan (as defined in section 4013) shall cease to apply with respect to such plan for purposes of section 4021 of the Employee Retirement Income Security Act of 1974.
"(e) DEEMED REDUCTION OF FUNDING BALANCES.—A rule similar to the rule of section 437(h) shall apply for purposes of this section.

(2) CHRONICAL AMENDMENT.—The table of parts for such chapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"PART III RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS.

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

(1) IN GENERAL.—Subpart B of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following:

"SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.

"(a) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFACTORS.—

"(1) IN GENERAL.—No amendment to a defined benefit plan (other than a multimember plan) which has the effect of increasing liabilities of the plan by reason of increases in compensation, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect before the plan year (as determined under section 430) for the current plan year (as determined under section 430(g)) bears to the meaning of section 430(g) the same relationship as that in which the funding target attainment percentage as of the valuation date of the plan for such plan year is—

"(A) less than 80 percent, or

"(B) would be less than 80 percent taking into account such amendment.

For purposes of this paragraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as effected by plan amendment.

"(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

"(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (as determined under section 430) for the plan year attributable to the amendment, and

"(B) in the case of paragraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

"(b) LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

"(1) IN GENERAL.—A defined benefit plan (other than a multimember plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any payment described in section 401(a)(22)(B).

"(2) EXCEPTION.—Paragraph (1) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

"(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERANCE FUNDING SHORTFALLS.—

A defined benefit plan (other than a multimember plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

"(d) NEW PLANS.—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years (as determined under section 430) for the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

"(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

"(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under section (b), (c), or (d) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies, as the case may be, 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.

Paragraph (1) shall cease as of such date.

"(2) PRESUMPTION OF UNDERFUNDING AFTER 15TH 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, the enrolled actuary of subsections (a), (b), and (c), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the 15th month of the plan year, and such day shall be deemed, for purposes of such subsections, to be the valuation date of the plan for the current plan year.

"(f) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY FULLY FUNDED PLANS.—In any case in which—

"(A) a benefit limitation under subsection (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

"(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year, unless—

"(I) the enrolled actuary of the plan certifies, as the case may be, the valuation date of the plan for the current plan year is—

"(i) for purposes of subsection (a), the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

"(II) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under subsection (b) of a payment described in subsection (b)(1) or a cessation of benefit accruals under subsection (c) is applied to a plan with respect to any plan year, the prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of a plan amendment after the valuation date of the plan for such subsequent plan year.

The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

"(g) FUNDING TARGET ATTAINMENT PERCENTAGE.—

"(1) IN GENERAL.—For purposes of this section, the term ‘funding target attainment percentage’ means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

"(A) the value of plan assets for the plan year (as determined under section 430(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 430(g)(5)), bears to

"(B) the funding target of the plan for the plan year (as determined under section 430(d)(1)), but without regard to section 430(d)(1).

"(2) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—

"(A) IN GENERAL.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under subsection (a) for the pre-funding balance and the funding standard carryover balance), paragraph (1) shall be applied without regard to such reduction.

"(B) TRANSITION RULES.—Paragraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting for ‘100 percent’ the applicable percentage determined in accordance with the following table:

<table>
<thead>
<tr>
<th>In the case of a plan year or beginning in calendar year:</th>
<th>The applicable percentage is</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>92 percent</td>
</tr>
<tr>
<td>2008</td>
<td>94 percent</td>
</tr>
<tr>
<td>2009</td>
<td>96 percent</td>
</tr>
<tr>
<td>2010</td>
<td>98 percent</td>
</tr>
</tbody>
</table>

"(C) LIMITATION.—Subparagraph (B) shall not apply with respect to any plan year after 2007 unless the funding target attainment percentage (determined without regard to this paragraph and without regard to the reduction under paragraph (1)(a) for the pre-funding balance and the funding standard carryover balance) of the plan for each preceding plan year after 2006 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

"(d) DEEMED REDUCTION OF FUNDING BALANCES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers—

"(1) IN GENERAL.—In any case in which a benefit limitation under subsection (a), (b), or (c) would (but for this subsection and determination without regard to subsection (a)(2)(A)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 432(f)(5) to reduce the balance of the pre-funding balance and the funding standard carryover balance for the plan year (in a manner consistent with the requirements of section 430(f)(5)(B)) by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

"(2) EXCEPTION FOR INSUFFICIENT FUNDING BALANCES.—Paragraph (1) shall not apply with respect to a benefit limitation for any plan year if the application of paragraph (1)
would not result in the benefit limitation not applying for such plan year.’’

(2) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by adding at the end the following new item: “Sec. 437. Funding-based limits on benefits and benefit accruals under single-employer plans.”

(e) EFFECTIVE DATE. — (1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plan shutdowns, or other unpredictable contingent events, occurring after December 31, 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plan years beginning after December 31, 2006.

(3) COLLECTIVE BARGAINING AGREEMENT.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act);

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply; or

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

(4) SPECIFIC RULING FOR 2007. — For purposes of applying subsection (e) of section 437 of such Code (as added by this section) to current plan years (within the meaning of such subsection) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the plan’s current plan year percentage determined under section 430 for the preceding year. For purposes of the preceding sentence, the term ‘modified funded current liability percentage’ means, with respect to the plan for a current plan year—

(i) the funded current liability percentage (as defined in section 437(a)(7) of such Code), reduced as described in subparagraph (E) thereof in the case of a plan—

(A) that is a multiemployer plan, or

(B) that is an extension thereof agreed to after the date of enactment of this Act, and

(ii) the funded current liability percentage (as defined in section 430(a)(3)(C) of such Code) determined without regard to subparagraph (a)(3)(C) and inserting section 430(d)(2).

(5) MISCELLANEOUS PROVISIONS.—

(a) BENEFIT LIMITATIONS ON PLANS IN AT-RISK STATUS.—In the case of a plan that is required to pay a variable rate of tax under section 4971(b) for the taxable year, the generally applicable limit on benefit payments determined under section 430 shall be increased by

(1) was not required to pay a variable rate of tax under section 4971(b) during the taxable year, and

(2) the aggregate plan unfunded liability of the plan for the taxable year (determined without regard to section 4971) is not more than 10 percent of the aggregate plan assets of the plan for the taxable year.

(b) DEDUCIBILITY OF AMOUNTS CONTRIBUTED TO A FINAL-PLANNED-TERM PLAN.—The amount contributed to a final-planned-term plan for any plan year shall be deductible for income tax purposes.

(c) DEDUCTIBILITY OF A MORTGAGE.—The deduction for a mortgage incurred by a plan which is required to apply, or

(d) CLAIMS AGAINST AN EMPLOYEE.—A claim against an employee for the recovery of any contributions made by such employee, or

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.
(c) DEFINITIONS.—Any term used in this section, and any term also used in section 430 of such Code or section 303 of such Act shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act, such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.

(d) SPECIAL RULE FOR 2006.—(1) Section 789(c)(3) of the Retirement Protection Act of 1994, as added by section 201 of the Pension Funding Equity Act of 2004, is amended by striking "and 2005" and inserting "2005 and 2006.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to plan years beginning after December 31, 2005.

(e) CONFORMING AMENDMENT.—(1) Section 789 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

(2) The amendment made by paragraph (1) shall take effect on December 31, 2006, and shall apply to plan years beginning after such date.

SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IS AT-RISK STATUS.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by inserting "and 2006" after "2005" and inserting "2005 and 2006".

(b) EMPLOYER-DEFINED BENEFIT PLAN IN AT-RISK STATUS.—If—

"(A) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status (as defined in section 430(c)(3)), assets are set aside (directly or indirectly) in a trust or other arrangement designated by the Secretary, or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

"(B) a nonqualified deferred compensation plan of the employer provides that assets will be devoted to the payment of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as properly transferred in connection with the performance of services whether or not such assets are to satisfy claims of general creditors.

(c) E ffective Date.—(1) For purposes of the preceding sentence, the term "modified funded current liability percentage" means the funded current liability percentage (as defined in section 412(l)(8) of such Code), reduced as described in subparagraph (A) thereof.

"(2) For purposes of determining if a plan is in at-risk status (within the meaning of section 499A of such Code, as added by this section) for any plan year beginning in 2006, such section shall be applied by substituting the plan's modified funded current liability percentage for the plan's funding target attainment percentage.

"(i) 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 year, determined with the first plan year for which this part applies to the plan over the total credits to such account for such years, and

"(ii) if the plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

"(B) a nonqualified deferred compensation plan of the employer to which section 412 applies is in an at-risk status (as defined in section 430(c)(3)), assets are set aside (directly or indirectly) in a trust or other arrangement designated by the Secretary, or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

"(C) a nonqualified deferred compensation plan of the employer provides that assets will be devoted to the payment of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as properly transferred in connection with the performance of services whether or not such assets are to satisfy claims of general creditors.

"(i) 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 year, determined with the first plan year for which this part applies to the plan over the total credits to such account for such years, and

"(ii) if the plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

"(D) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)), separately, with respect to each plan year, the net experience loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years, and

"(E) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)), separately, with respect to each plan year, the net experience gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years.

In the case of a plan year beginning in calendar year:

<table>
<thead>
<tr>
<th>Year</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>90 percent</td>
</tr>
<tr>
<td>2008</td>
<td>90 percent</td>
</tr>
<tr>
<td>2009</td>
<td>94 percent</td>
</tr>
<tr>
<td>2010</td>
<td>96 percent</td>
</tr>
<tr>
<td>2011</td>
<td>98 percent</td>
</tr>
</tbody>
</table>

TITlE II—FUNDING RULES FOR MULTIEMPLOYEE DEFINED BENEFIT PLANS

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

SEC. 201. FUNDING RULES FOR MULTIEMPLOYEE DEFINED BENEFIT PLANS.


(b) CONFORMING AMENDMENT.—(A) Section 102 of the Consolidated Appropriations Act, 2006, is amended by striking "(as added by section 102 of the Consolidated Appropriations Act, 2005)" and inserting "(as added by section 102 of the Consolidated Appropriations Act, 2005, and 2006)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 202. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.

(a) IN GENERAL.—The amendments to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) made by this section are further amended by striking the following:

"(2) is sponsored by a company that is existent after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years.

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years.

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years.

(c) 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) over a period of 5 plan years any amount credited to the funding standard account under section 302(c)(7)(A)(i)(I) during the period beginning on the day before the date of the enactment of the Pension Protection Act of 2006, and

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) as in effect on the day before the date of the enactment of the Pension Protection Act of 2005.

(d) 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) over a period of 5 plan years any amount credited to the funding standard account under section 302(c)(7)(A)(i)(I) during the period beginning on the day before the date of the enactment of the Pension Protection Act of 2006, and

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) as in effect on the day before the date of the enactment of the Pension Protection Act of 2005.

(c) E ffective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.
effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization period determined on the basis of the remaining amortization periods for all items entered into such combined amount, and (B) any amount described in paragraph (3)(B)(ii) or (3)(B)(ii) shall not apply to the amount so deferred by such election was deferred with interest on the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year to the Pension Benefit Guaranty Corporation pursuant to section 2222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 prior to such date, for any plan year beginning on or after such date shall be treated as an experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2B)(iv)) shall not apply to the amount so charged.

Financial assistance.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any amount of any credit or gain that is 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.

Full funding limitation.—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

(i) the accrued liability (including normal cost) for the plan year beginning on or after the entry age normal funding method if such accrued liability cannot be directly calculated under the funding methods used for the plan), over

(ii) the lesser of—

1. the fair market value of the plan’s assets, or

2. the value of such assets determined under paragraph (2).

Minimum amount.—In no event shall the full-funding limitation determined for the plan year beginning on or after the date of the enactment of the Pension Protection Act of 2005) over any period beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.

(b) Any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.

(c) Any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.

(d) Any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.

(e) Any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.

(f) Any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.

(g) Any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one domiciliary level to another domiciliary level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) applies to participants before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change begins.
“(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) [Describe the requirements or conditions for determining the plan’s assets determined under paragraph (2)].

“(III) [Describe the conditions or requirements for purposes of clause (i), any benefit contingent on an event other than—

“(a) age, service, compensation, death, or disability—

“(b) 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.

“(II) 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) SEPARATE MORTALITY TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under clause (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 901(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 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 project the future experience of such type of plans. The Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

“(V) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (IV)—

“(I) IN GENERAL.—In the case of plan years beginning before December 31, 1994, the tables under subclause (I) shall not be used 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 on or after such date.

“(II) APPLICATION OF CURRENT LIABILITY DETERMINATION WHERE A DISABILITY OCCURS DURING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall not be used 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 the tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the current mortality and other changes in the actuarial experience of the plan and projected trends in such experience.

“(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan’s current liability for any year, if the rate of interest used in the determination of the plan’s 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 clause (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 prescribed by the tables under clause (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 rate of interest used under the plan shall be—

“(I) determined without taking into account the experience of the plan and reasonable expectations regarding future experience,

“(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

“(VII) ANNUAL VALUATION.—

“(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan’s liabilities shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required by the plan’s funding status and 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 which the valuation refers to, but not more than one month prior to the beginning of such year.

“(ii) USE OF PRIOR YEAR VALUATION.—The value of the assets of the plan as of the date referred to in clause (i) may be determined by the plan’s actuarial determination, as of the date of the valuation referred to in clause (i).

“(IV) LIMITATION.—A change in the method of funding to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the plan year, the value of the assets of the plan are not less than 75 percent of the current liability of the plan (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

“(VIII) 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.

“(b) The tables of cost-of-living adjustments provided in section 203(a) of the Internal Revenue Code of 1986 for the 1st month of such plan year, or

“(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures.

“(II) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary of the Treasury for a period of time (not in excess of 5 years) if it is demonstrated to such Secretary that—

“(A) a substantial risk to the voluntary continuation of the plan, or

“(B) a substantial curtailment of pension benefit levels or employee compensation, and

“(C) to be adverse to the interests of plan participants in the aggregate.

“(I) ADVANCE NOTICE.

“(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the application for an extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and that such Secretary determines that such extension would not—

“(A) result in—

“(i) a substantial risk to the voluntary continuation of the plan, or

“(ii) a substantial curtailment of pension benefit levels or employee compensation, and

“(B) to be adverse to the interests of plan participants in the aggregate.

“(II) CONFORMING AMENDMENTS.

“(1) SECTION 301 OF SUCH ACT (29 U.S.C. 1081) MADE STRIKING SUBSECTION (D).

“(2) THE TABLE OF COST-OF-LIVING ADJUSTMENTS DEEMED MADE.
the item relating to section 303 the following new item:

"Sec. 304. Minimum funding standards for multiemployer plans."

(c) EFFECTIVE DATE. The amendments made by this section shall apply to plan years beginning after December 31, 2006.

SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended further by inserting after section 304 the following new section:

"SEC. 305. (a) Annual certification by plan actuary.—(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsection (A)(ii) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d).

(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(ii) that employer and employee contributions for the most recent plan year will continue only as long as the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into collective bargaining agreements for the first time, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

(b) EFFECTIVE DATE. In title I of subtitle B of Part 3 of title I of the Employee Retirement Income Security Act of 1974, the preceding provisions of this Act are amended by substituting the heading ‘‘Part 3—Multiemployer Plans in Endangered Status or Critical Status’’ for the heading ‘‘Part 3—Multiemployer Plans, etc.’’ in such title.

(1) IN GENERAL.—During the 90-day period preceding the beginning of each plan year of a multiemployer plan, the plan actuary shall make a certification to the Secretary of Labor that the plan is not in endangered status with respect to such plan year.

(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a),—

(A) the plan’s funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

(3) FUNDING IMPROVEMENT PLAN.—(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment during the funding improvement period under the funding improvement plan, of the following benchmarks:

(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan’s funded percentage such that—

(I) the difference between 100 percent and the plan’s funded percentage for the last year of the funding improvement period, is not more than

(II) 2% of the difference between 100 percent and the plan’s funded percentage for the first year of the funding improvement period;

(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCY.—In the case of a plan in which the funded percentage for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)) is less than 75 percent, the funding improvement plan shall consist of amendments to the plan formulated to provide:

(I) the second anniversary of the date of the adoption of the funding improvement plan, or

(II) the first day of the plan year of the multiemployer plan following the plan year in which occurs the first date after the second anniversary of the date of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants, or

(iii) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—(I) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i) shall be applied by substituting ‘‘2⁄3 of the difference between 100 percent and subparagraph (B)’’ for ‘‘2⁄3 of the difference between 100 percent and subparagraph (B)’’.

(II) The plan actuary shall include in the annual report for such plan year under section 104(a) and in the summary annual report described in section 108(b)(3), a statement of the purpose and effect of the funding improvement plan.

(3) FUNDING IMPROVEMENT PLAN.—(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan adopted pursuant to this title, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

(i) an increase in the plan’s funded percentage, and

(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan’s benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(B) RECOMMENDATIONS BY PLAN SPONSOR.—(I) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contracts, assumptions, or any combination thereof, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

(II) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party with respect to a multiemployer plan certified to be in endangered status, the plan sponsor shall—

(I) employ at least 5 percent of the active participants, or

(II) represent an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(III) OTHER INFORMATION.—The plan sponsor shall provide all such parties with information describing the effects of any reduction in benefit accruals, and provide the bargaining parties with additional information relating to contribution..."
structures or benefit structures or other information relevant to the funding improvement plan.

(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

‘‘(A) a reduction in the level of contributions for participants who are not in pay status,

‘‘(B) a suspension of contributions with respect to any period of service, or

‘‘(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

‘‘(A) RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.—In any case in which the present value of a participant’s accrued benefit under the plan exceeds $5,000, such benefit may not be distributed as an immediate distribution or in any other accelerated form.

‘‘(B) PROHIBITION ON BENEFIT INCREASES.—

‘‘(1) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by an 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.

‘‘(2) EXCEPTION.—Clause (1) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter J of subtitle A of the Internal Revenue Code of 1986.

(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

‘‘(A) so as to be inconsistent with the funding improvement plan, or

‘‘(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (5)(A).

‘‘(C) FUNDING RULES FOR MULTIEmployER PLANS IN CRITICAL STATUS.—

‘‘(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) or (otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

‘‘(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

‘‘(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

‘‘(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

‘‘(3) CRITICALITY DESCRIPTION.—For purposes of determining whether a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

‘‘(A) a plan is described in this subparagraph if, as of the beginning of the current plan year—

‘‘(i) the funded percentage of the plan is less than 65 percent, and

‘‘(ii) the sum of—

‘‘(I) the market value of plan assets, plus

‘‘(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

‘‘(B) a plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

‘‘(i) the market value of plan assets, plus

‘‘(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

‘‘(C) A plan is described in this subparagraph if—

‘‘(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

‘‘(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

‘‘(D) A plan is described in this subparagraph if—

‘‘(i)(I) the plan’s normal cost for the current plan year, plus interest (determined at the rate used in determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, and

‘‘(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year, and

‘‘(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

‘‘(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

‘‘(E) A plan is described in this subparagraph if—

‘‘(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

‘‘(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 304(d).

(4) REHABILITATION PLAN.—

(1) IN GENERAL.—A rehabilitation plan shall consist of—

‘‘(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions from plan participants in plan year (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined to cause the plan to cease, during the rehabilitation period, to be in critical status, or

‘‘(ii) reasonable measures to forestall solvency (within the meaning of section 425) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during and in the summary annual period to be in critical status.

A rehabilitation must provide annual standards for meeting the requirements of such rehabilitation plan.

(2) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the date on which the plan enters into critical status.

‘‘(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

‘‘(ii) the first day of the first plan year of the multiemployer plan following the plan year during which occurs the first date, after the date of the plan’s entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

‘‘(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

(5) DEVELOPMENT OF REHABILITATION PLAN.—

‘‘(A) PROPOSALS BY PLAN SPONSOR.—

‘‘(1) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no future increases in rates of contribution to the plan.

‘‘(II) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no future increases in rates of contribution to the plan.

(III) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor’s proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

‘‘(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party, the plan sponsor shall—

‘‘(i) employs at least 5 percent of the active participants, or
“(ii) represents an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,
the plan sponsor shall include among the proposals
which schedule containing
increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

“(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan must notify the plan trustee to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

“(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions (or such schedule apply to such bargaining party.

“(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any schedule proposed under paragraph (D) shall not reduce the rate of future accruals below the lower of

"(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to the plan's standard accrual rate, or

"(ii) the equivalent of the then current overall funding status

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

“(F) PROTECTION OF RESTORED RATES OF ACCRUAL.—

“(i) IN GENERAL.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below any restored accrual rate.

“(ii) RESTORED ACCRUAL RATE.—For purposes of clause (i), the term ‘restored accrual rate’ means, in connection with a multiemployer plan:

"(A) the then current overall funding status

The term ‘accumulated funding deficiency’ means the same amount as determined under section 4201.

“(G) AMENDMENTS.—The term ‘amendments’ has the same meaning as provided in section 515 and shall be enforceable as such.

“(H) IMPLEMENTATION OF DEF AULT SCHEDULE UPON FAILURE TO A DOP REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

"(A) so as to be inconsistent with the rehabilitation plan, or

"(B) so as to increase future benefit accruals.

The plan shall be amended in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

“(I) SPECIAL RULE FOR PLAN AMENDMENTS.—A multiemployer plan in critical status shall not fail to meet the requirements of section 515 if the plan sponsor, and

“(A) an employee who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under subparagraph (C), or

“(B) an employer who may, at the discretion of the plan sponsor, be deemed to receive a withdrawal notice under section 4205 or a partial withdrawal by the employer under section 4205.

“(J) SPECIAL RULE FOR PLAN AMENDMENTS.—A multiemployer plan in critical status shall not fail to meet the requirements of section 515 if the plan sponsor, and

“(A) an employee who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under subparagraph (C), or

“(B) an employer who may, at the discretion of the plan sponsor, be deemed to receive a withdrawal notice under section 4205 or a partial withdrawal by the employer under section 4205.

“(K) INACTIVE PARTICIPANT.—The term ‘in-
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 a death benefit under the plan.

"(7) OBLIGATION TO CONTRIBUTE.—The term "obligation to contribute" has the meaning provided such term under section 4221(a).

"(8) FUNDING STATUS.—A plan shall be treated as being in critical status as of the date of the plan is certified to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7)."

(b) ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6) by striking "(6), or (7)" and inserting "(6), (7), or (8);"

(2) by redesigning subsection (a)(8) as subsection (a)(9); and

(3) by inserting after subsection (c)(7) the following new paragraph:

"(8) The Secretary may assess a civil penalty against any:

"(A) person of not more than $1,100 per day for each violation by such person of subsection (a)(1), (b)(1), or (c)(1) of section 502,

"(B) any plan sponsor for failure by the plan sponsor to implement the terms of any funding improvement plan or rehabilitation plan adopted under section 502;

(c) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the provisions of this Act) is amended further by inserting after the item relating to section 304 the following new item:

"Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status."

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

(e) SPECIAL RULE FOR 2006.—In the case of any plan year beginning in 2006, any reference in section 303 of the Employee Retirement Income Security Act of 1974 (as added by this section) to section 304 of such Act (as added by this Act) shall be treated as a reference to the corresponding provision of the Employee Retirement Income Security Act of 1974 as in effect for plan years beginning in such year.

SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4225(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1390(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 companion 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 January 1, 2006.

SEC. 204. WITHDRAWAL LIABILITY REFORMS.

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY IN THE EVENT OF CERTAIN SALES OF EMPLOYER ASSETS TO UNRELATED PARTIES.—

(1) In general.—Section 4201(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(b)) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 4225.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY TO PLAN EXISTING AT TIME OF SALE.—

(1) IN GENERAL.—Section 4219(c)(1) of such Act (29 U.S.C. 1401(c)(1)) is amended by striking subparagraphs (B) and (C) and inserting the following: "(B) the amount necessary to amortize the amount required to be recovered by the plan under section 4205(b) of such Act (29 U.S.C. 1383(d)) is repealed; and (C) such determination is based in whole or in part on a finding by the plan sponsor under section 4219(c)(2) that a principal purpose of such a transaction was to eliminate, or to avoid withdrawing liability under a plan, or to another party or parties after "to another location".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

(c) CONFORMING AMENDMENTS.—The Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.

(c) ADDITIONAL AMENDMENTS.—

(1) Subparagraph (A) of section 4219(c)(2) of such Act (29 U.S.C. 1401(c)(2)) is amended by inserting "Notwithstanding" and inserting "In the case of a transaction occurring before January 1, 1999, and at least 5 years before the occurrence of a central or partial withdrawal, notwithstanding".

(2) Section 4219(c)(2)(B) of such Act (29 U.S.C. 1401(c)(2)(B)) is amended—

(A) by inserting "the plan" before "with respect to withdrawal liability payments" after "determining" the first place it appears, and

(B) by striking "any" and inserting "the".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 on or after the date of the enactment of this Act.

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Subpart A of section 412 of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (added by section 112 of this Act) is amended by-
meaning of section 412(c)(3) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years.

(2) 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 (as described in paragraph (2)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

(3) 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)(iv) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising during the period of 15 plan years, and

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, beginning with the plan year in which the amount arose.

(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose.

(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) was effective for any plan participant before the beginning of the first plan year beginning or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

(E) SPEAKERS RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this section—

(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer’s withdrawal liability under part I of subtitle E of title IV of such Act 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.

(B) ADJUSTMENTS WHEN A MULTIPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan leaves reorganization by reason of an increase in 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 the reasonable (reasonable) determinations), 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 321, 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)(2)(B) and (c)(1) 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

"(I) the lesser of—

"(I) the fair market value of the plan’s assets, or

"(II) the value of such assets determined under paragraph (2), or

"(II) 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), or

"(III) 100 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 full-funding limitation 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).

"(C) **FULL-FUNDING LIMITATION.**—For purposes of this subparagraph, unless otherwise provided by the plan, the accrued liability under a multipurpose plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

(7) **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—

"(A) age, service, compensation, death, or disability, or

"(B) 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 paragraph (E).

"(iv) **MORTALITY TABLES.**—

"(D) **COMMISSIONERS’ STANDARD TABLE.**—In the case of plan years beginning before the first day of the plan year to which the average of the salaries described in subsection (2) 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 801(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 the rate of interest used 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 the plan and the expected 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.

(8) **SEPARATE MORTALITY TABLES FOR THE DISABLED.**—Notwithstanding clause (iv)—

"(i) **IN GENERAL.**—In the case of plan years beginning after December 31, 1996, 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, 1996, and for individuals whose disabilities occur in plan years beginning on or after such date.

"(ii) **SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1996.**—In the case of disabilities occurring in plan years beginning after December 31, 1996, and before January 1, 1997, the Secretary shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(9) **PERIODIC REVIEW.**—The Secretary shall periodically (at least every 5 years) review any mortality tables under paragraph (8) and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(10) **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—

"(D) **IN GENERAL.**—Except as provided in clause (II), the term ‘permissible range’ means a range 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 unreasonable high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average of any determinable interest defined under subsection (b)(3).

"(iii) **ASSUMPTIONS.**—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be determined without taking into account the experience of the plan and reasonable expectations, but consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(11) **ANNUAL VALUATION.**—

"(A) **IN GENERAL.**—For purposes of this section, a determination of experience gains and losses and a valuation of the plan’s liabilities 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 relates if the assets of such 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.

(12) **TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.**—For purposes of this section, contributions that may be 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 date 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.

(13) **INTEREST RATE FOR WAIVERS AND EXTENSIONS.**—The interest rate applicable for any plan year for purposes of computing the funding charge or cost in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

"(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year),

"(B) the rate of interest used under the plan for determining costs.
“(B) the plan sponsor has adopted a plan to improve the plan’s funding status, and

“(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures.

“(2) Additional extension.—The period of years required to amortize any unfunded liability attributable to the plan’s deficiency for any plan year beginning on or after such date shall be 15 years, but with respect to any such plan year beginning before such date, the period of years shall be 30 years.

“(3) Effective date.—The amendments made by this subsection shall apply to plan years beginning after December 31, 2006.

SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIPLEEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

“(A) IN GENERAL.—In making the determinations under this subsection, the plan actuary shall make projections under subsection (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974 for such plan year.

“(B) DETERM INATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

“(1) that employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

“(2) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines that such continuation will not cause the plan to be in endangered status for such plan year.

“(C) SUBSTANTIATION.—The plan sponsor shall provide satisfactory evidence to the plan actuary that the plan will maintain such contributions.

“(D) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—If the plan actuary determines that the plan will not maintain such contributions, the plan sponsor shall—

“(1) provide the plan actuary with a written explanation of the reasons why the plan will not maintain such contributions, and

“(2) request a determination by the plan actuary as to the extent to which the plan is in endangered status for such plan year.

“(E) DETERMINATIONS.—The plan actuary shall—

“(1) certify, as of the date of such certification, that the plan is in endangered status for such plan year, or

“(2) determine the extent to which the plan is in endangered status for such plan year.

“(F) NOTICES.—The plan actuary shall—

“(1) notify the Secretary of Labor of any determination made under this paragraph, and

“(2) provide the Secretary with any information that the Secretary requests to determine whether such plan is in endangered status for such plan year.

“(G) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 2006.

SEC. 433. ADDITIONAL FUNDING RULES FOR MULTIPLEEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

“(A) IN GENERAL.—In making the determinations under this subsection, the plan actuary shall make projections under subsection (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974 for such plan year.

“(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

“(1) that employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

“(2) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines that such continuation will not cause the plan to be in endangered status for such plan year.

“(C) SUBSTANTIATION.—The plan sponsor shall provide satisfactory evidence to the plan actuary that the plan will maintain such contributions.

“(D) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—If the plan actuary determines that the plan will not maintain such contributions, the plan sponsor shall—

“(1) provide the plan actuary with a written explanation of the reasons why the plan will not maintain such contributions, and

“(2) request a determination by the plan actuary as to the extent to which the plan is in endangered status for such plan year.

“(E) DETERMINATIONS.—The plan actuary shall—

“(1) certify, as of the date of such certification, that the plan is in endangered status for such plan year, or

“(2) determine the extent to which the plan is in endangered status for such plan year.

“(F) NOTICES.—The plan actuary shall—

“(1) notify the Secretary of Labor of any determination made under this paragraph, and

“(2) provide the Secretary with any information that the Secretary requests to determine whether such plan is in endangered status for such plan year.

“(G) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 2006.

SEC. 434. ADDITIONAL FUNDING RULES FOR MULTIPLEEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

“(A) IN GENERAL.—In making the determinations under this subsection, the plan actuary shall make projections under subsection (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974 for such plan year.

“(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

“(1) that employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

“(2) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines that such continuation will not cause the plan to be in endangered status for such plan year.

“(C) SUBSTANTIATION.—The plan sponsor shall provide satisfactory evidence to the plan actuary that the plan will maintain such contributions.

“(D) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—If the plan actuary determines that the plan will not maintain such contributions, the plan sponsor shall—

“(1) provide the plan actuary with a written explanation of the reasons why the plan will not maintain such contributions, and

“(2) request a determination by the plan actuary as to the extent to which the plan is in endangered status for such plan year.

“(E) DETERMINATIONS.—The plan actuary shall—

“(1) certify, as of the date of such certification, that the plan is in endangered status for such plan year, or

“(2) determine the extent to which the plan is in endangered status for such plan year.

“(F) NOTICES.—The plan actuary shall—

“(1) notify the Secretary of Labor of any determination made under this paragraph, and

“(2) provide the Secretary with any information that the Secretary requests to determine whether such plan is in endangered status for such plan year.

“(G) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 2006.
“(D) REPORTING.—A summary of any fund-
ing improvement plan or modification there-
to adopted during any plan year, together with an-
ual updates regarding the funding ratio of the
plan shall be included in the annual
report for such plan year under section
104(a) of the Employee Retirement Income
Security Act of 1974 and in the summary an-
nual report described in section 10b(3) of such
Act.

“(4) DEVELOPMENT OF FUNDING IMPROVE-
MENT PLAN.—(A) ACTIONS BY PLAN SPONSOR PEND-
ing APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall provide all such par-
tions, consistent with the terms of the plan
and applicable law, necessary to ensure—
(i) an increase in the plan’s funded per-
centage, and

(ii) postponement of an accumulated
funding deficiency for at least 1 additional plan
year.

Such actions include applications for exten-
sions of amortization periods under section
431(d), use of the shortfall funding method in
making funding standard account computa-
tions, amendments to the plan’s benefit
structure, reductions in future benefit accru-
sal, and other reasonable actions consistent with the terms of the plan and applicable law.

“(B) RECOMMENDATIONS BY PLAN SPONSOR.—

(i) In general.—During the period of 90
days following the date on which a multiem-
ployer plan is certified to be in endangered
status, the plan sponsor shall develop and
provide to the bargaining parties alternative
proposals for revised benefit structures, con-
tribution structures, or both, which, if
adopted as amendments to the plan, may be
reasonably expected to meet the benchmarks
described in paragraph (3)(A). Such proposals
shall include—

(I) at least one proposal for reductions in
the amount of future benefit accruals neces-
sary to achieve the benchmarks, assuming
no amendments increasing contributions
under the plan (other than amendments in-
creasing contributions necessary to achieve
the benchmarks after amendments have re-
duced future benefit accruals to the max-
imum extent permitted by law), and

(II) at least one proposal for increases in
contributions necessary to achieve the benchmarks, assuming no amendments reducing future benefit accru-
sal under the plan.

(ii) REQUESTS BY BARGAINING PARTIES.—
Upon the request of any bargaining party
who—

(I) employs at least 5 percent of the ac-
tive participants, or

(II) represents as an employee organiza-
tion, for purposes of collective bargaining, at
least 5 percent of the active participants,
the plan sponsor shall provide all such par-
ties information as to other combinations of
increases in contributions and reductions in
future benefit accruals which would result in
achieving the benchmarks.

(iii) OTHER INFORMATION.—The plan spon-
sor may, as it deems appropriate, prepare and
provide the bargaining parties with addi-
tional information relating to contribution
structures or benefit structures or other in-
formation relevant to the funding improve-
ment plan.

“(5) MAINTENANCE OF CONTRIBUTIONS PEND-
ing APPROVAL OF FUNDING IMPROVEMENT PLAN.—
Pending approval of a funding improvement
plan by the bargaining parties with respect to
a multiemployer plan, the multiemployer plan may not be amended so as to provide—

(I) a suspension of contributions with re-
spect to any period of service, or

(II) any new direct or indirect exclusion of
younger or newly hired employees from plan
benefits.

“(6) BENEFIT RESTRICTIONS PENDING AP-
PROVAL OF FUNDING IMPROVEMENT PLAN.—
Pending approval of a funding improvement
plan by the bargaining parties with respect to
a multiemployer plan—

(A) RESTRICTIONS ON LUMP SUM AND SIMI-
LAR DISTRIBUTIONS.—In any case in which the
present value of a participant’s accrued ben-
et under the plan exceeds $5,000, such ben-
et may not be distributed as an immediate
distribution or in any other accelerated
form.

(B) PROHIBITION ON BENEFIT INCREASES.—

(i) In general.—No amendment of the plan
which increases the liabilities of the plan
by reason of any increase in benefits,
any change in the accrual of benefits, or any
change in the rate at which benefits become
nonforfeitable under the plan may be adopt-
ed.

(ii) EXCEPTION.—Clause (i) shall not apply to
any plan amendment which is required as
the condition to the commencement of the fu-
tural plan year or any of the 4 succeeding plan
years, assuming that the terms of the one or more collective bar-
gaining agreements pursuant to which the
plan is maintained for at least 1 additional plan
year continue in effect for succeeding plan years.

“(7) DEFAULT CRITICAL STATUS IF NO FUND-
ing IMPROVEMENT PLAN ADOPTED.—If no plan
amendment effective as of the end of the plan
year has been adopted by the end of the 240-
day period referred to in subsection (b)(1), the
plan enters into critical status as of the first day of the succeeding plan
year.

“(8) RESTRICTIONS UPON APPROVAL OF FUND-
ing IMPROVEMENT PLAN.—Upon adoption of a
funding improvement plan with respect to a
multiemployer plan, the plan may not be ame-
ded—

(A) so as to be inconsistent with the fund-
ing improvement plan,

(B) so as to increase future benefit accruals,
unless the plan actuary certifies in ad-
ance that, after taking into account the
proposed increase, the plan is reasonably ex-
pected to meet the the benchmarks described
in paragraph (3)(A).

“(C) FUNDING RULES FOR MULTIEMPLOYER
PLANS IN CRITICAL STATUS.—

(1) In general.—In any case in which a
multiemployer plan is in critical status for a
plan year as of the beginning of such plan
year (or otherwise enters into critical status
under this section) and no rehabilitation plan
under this subsection with respect to such
multiemployer plan is in effect for the plan
year, the plan sponsor shall, in accordance
with this subsection, amend the multiem-
ployer plan to include a rehabilitation plan
under this subsection. The amendments
shall be adopted not later than 240 days after
the date on which the plan enters into critical
status.

(2) Critical status.—A multiemployer plan is in critical status for a plan year if—

(A) the plan is in endangered status for
the preceding plan year and the require-
ments of subsection (b)(1) were not met with
respect to the plan for such preceding plan
year, or

(B) as determined by the plan actuary
under subsection (a), the plan is described in
paragraph (3).

(3) Criticality description.—For pur-
poses of paragraph (2)(B), a plan is described in
least one of the following subparagraphs:

(A) A plan is described in this subpara-
graph if, as of the beginning of the current
plan year, and

(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
expected employer and employee con-
tributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bar-
gaining agreements pursuant to which the
plan is maintained for at least 1 additional plan
year continue in effect for succeeding plan years,

is less than the present value of all non-
forfeitable benefits for all participants and
beneficiaries projected to be payable under
the plan during the current plan year and each of the 6 succeeding plan years (plus ad-
ministrative expenses for such plan years).

(B) A plan is described in this subpara-
graph if, as of the beginning of the current
plan year, the sum of—

(i) the market value of plan assets, plus

(ii) the present value of all reasonably
expected employer and employee con-
tributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bar-
gaining agreements pursuant to which the
plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all non-
forfeitable benefits for all participants and
beneficiaries projected to be payable under
the plan during the current plan year and each of the 4 succeeding plan years (plus ad-
ministrative expenses for such plan years).

(C) A plan is described in this subpara-
graph if—

(i) as of the beginning of the current plan
year, the funded percentage of the plan is
less than 65 percent, and

(ii) the accrued benefit in the plan is
an accumulated funding deficiency for the current plan year or is pro-
jected to have an accumulated funding defi-
cit 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 subpara-
graph if—

(i) the plan’s normal cost for the current
plan year, plus interest (determined at
the rate used for determining cost under the
plan) for the current plan year on the
amount of unfunded benefit liabilities under
the plan as of the last date of the preceding
plan year, exceeds

(ii) the present value, as of the beginning
of the current plan year, of the reasonably
anticipated employer and employee con-
tributions for the current plan year,

not taking into account any extension of
amortization periods under section 431(d).

(E) A plan is described in this subpara-
graph if—

(i) the funded percentage of the plan is
greater than 65 percent for the current plan
year and

(ii) the plan is projected to have an accu-
mulated funding deficiency for the current
plan year or any of the 4 succeeding plan
years, not taking into account any extension
of amortization periods under section 431(d).

(4) REHABILITATION PLAN.—

(A) In general.—A rehabilitation plan
shall consist of—

(i) amendments to the plan providing
(under reasonable actuarial assumptions) for
measures, agreed to by the bargaining par-
ties—(I) a reduction in the rate at which
benefit increases, (II) an increase in
benefit accruals, (III) a reduction in plan
expenditures (including plan mergers and
consolidations), or (IV) future benefit ac-
accurals, or to take any combination of such
to the funding improvement plan, or

(ii) the present value of the reasonably
expected employer and employee con-
tributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bar-
gaining agreements pursuant to which the
plan is maintained for at least 1 additional plan
year continue in effect for succeeding plan years,
‘‘(ii) reasonable measures to forestall possible insolvency (within the meaning of section 412(e) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

A rehabilitation must provide annual standards for meeting the requirements of such rehabilitation plan.

(B) Rehabilitation Period.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period following the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the first day of the first plan year of the plan following the plan year in which the plan enters into critical status.

The plan sponsor shall include among the participants in such multiemployer plans (determined as of such date of entry) by the bargaining parties.

Future benefit accruals as may be specified in the plan shall be reduced to the maximum extent permitted by law.

(B) Requests for Additional Schedules.—The plan sponsor shall provide an allowance for funding reduction in the plan's overall funding status determined by the trustees based on the then current overall funding status and the then current overall funding status for the purposes of determining the unfunded vested benefits.

(6) Restored Accrual Rate.—For purposes of determining the unfunded vested benefits of a multiemployer plan following the plan year in which the plan enters into critical status, the accrual rate shall be increased to a level of a participant's accrued benefit in the plan that is not in the plan's overall funding status at the then current overall funding status and the then current overall funding status for the purposes of determining the unfunded vested benefits.

(7) Special Rules.—

(A) Automatic Employer Surcharge.—

(i) 5 percent and 10 percent surcharges.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be required to contribute to the plan an amount equal to 5 percent of the contribution otherwise required under the collective bargaining agreement for the purpose of sustaining the plan in critical status. For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the collective bargaining agreement for the purpose of sustaining the plan in critical status.

(B) Requests for Additional Schedules.—No new request for additional schedules shall be accepted with respect to the request for such schedule.

(D) Normal Retirement Benefits—For purposes of this paragraph, the term 'adjustable benefit' means—

(ii) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

(ii) otherwise collectively bargained benefit schedules.

(E) Surcharge Not to Apply Until Employer Receives 30-Day Notice.—The surcharge under this subparagraph shall not apply to any employer unless the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

(7) Special Rules.—

(A) Automatic Employer Surcharge.—For purposes of this subsection, by sub-

(i) 5 percent and 10 percent surcharges.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be required to contribute to the plan an amount equal to 5 percent of the contribution otherwise required under the collective bargaining agreement for the purpose of sustaining the plan in critical status.

(B) Requests for Additional Schedules.—No new request for additional schedules shall be accepted with respect to the request for such schedule.

(D) Normal Retirement Benefits—For purposes of this paragraph, the term 'adjustable benefit' means—

(ii) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

(ii) otherwise collectively bargained benefit schedules.

(E) Surcharge Not to Apply Until Employer Receives 30-Day Notice.—The surcharge under this subparagraph shall not apply to any employer unless the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

(7) Special Rules.—

(A) Automatic Employer Surcharge.—For purposes of this subsection, by sub-

(i) 5 percent and 10 percent surcharges.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be required to contribute to the plan an amount equal to 5 percent of the contribution otherwise required under the collective bargaining agreement for the purpose of sustaining the plan in critical status.

(B) Requests for Additional Schedules.—No new request for additional schedules shall be accepted with respect to the request for such schedule.

(D) Normal Retirement Benefits—For purposes of this paragraph, the term 'adjustable benefit' means—

(ii) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

(ii) otherwise collectively bargained benefit schedules.

(E) Surcharge Not to Apply Until Employer Receives 30-Day Notice.—The surcharge under this subparagraph shall not apply to any employer unless the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

(7) Special Rules.—

(A) Automatic Employer Surcharge.—For purposes of this subsection, by sub-

(i) 5 percent and 10 percent surcharges.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be required to contribute to the plan an amount equal to 5 percent of the contribution otherwise required under the collective bargaining agreement for the purpose of sustaining the plan in critical status.

(B) Requests for Additional Schedules.—No new request for additional schedules shall be accepted with respect to the request for such schedule.

(D) Normal Retirement Benefits—For purposes of this paragraph, the term 'adjustable benefit' means—

(ii) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

(ii) otherwise collectively bargained benefit schedules.

(E) Surcharge Not to Apply Until Employer Receives 30-Day Notice.—The surcharge under this subparagraph shall not apply to any employer unless the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

(7) Special Rules.—

(A) Automatic Employer Surcharge.—For purposes of this subsection, by sub-

(i) 5 percent and 10 percent surcharges.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be required to contribute to the plan an amount equal to 5 percent of the contribution otherwise required under the collective bargaining agreement for the purpose of sustaining the plan in critical status.

(B) Requests for Additional Schedules.—No new request for additional schedules shall be accepted with respect to the request for such schedule.

(D) Normal Retirement Benefits—For purposes of this paragraph, the term 'adjustable benefit' means—

(ii) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

(ii) otherwise collectively bargained benefit schedules.

(E) Surcharge Not to Apply Until Employer Receives 30-Day Notice.—The surcharge under this subparagraph shall not apply to any employer unless the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.
Guaranty Corporation under subsection (c)(5) of that section.

"(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

(A) so as to be inconsistent with the rehabilitation plan; or

(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If a plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(i).

(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement Income Security Act of 1974 or as termination by the employer under section 4204 of such Act.

(11) SPECIAL RULE FOR PLAN AMENDMENTS FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—If a plan is not amended to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 431(d)(6) solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of this subsection.

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

(1) 'BARGAINING PARTY.'—The term 'bargaining party' means, in connection with a multiemployer plan—

(A) an employer who has an obligation to contribute under the plan, and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(2) FUNDED PERCENTAGE.—The term 'funded percentage' means, expressed as a ratio of which—

(A) the numerator of which is the value of the plan’s assets, as determined under section 431(b)(5),

(B) the denominator of which is the accrued liability of the plan.

(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' means the meaning provided such term in section 431(a).

(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who—

(A) is 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.

(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 422(a) of the Employee Retirement Income Security Act of 1974.

(8) ENTRY INTO CRITICAL STATUS.—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under section (b)(7).

(9) EXCISE TAX ON FAILURES TO ACT WITH RESPECT TO MULTIPLE EMPLOYER PLANS IN CRITICAL STATUS.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following:

(g) MULTIPLE EMPLOYER PLANS IN CRITICAL STATUS.—

(1) SUBSTITUTION OF EXCISE TAX FOR INITIAL AND ADDITIONAL TAX.—In the case of a multiemployer plan to which section 432(c) applies for a period, subsections (a) and (b) shall not apply with respect to such period.

(2) FAILURE TO ADOPT REHABILITATION PLAN.—

(A) IN GENERAL.—In the case of a multiemployer plan to which section 432(c) applies, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan.

(B) AMOUNT OF TAX.—The amount of the tax imposed under subparagraph (A) with respect to each plan sponsor shall be the greater of—

(i) the amount of tax imposed under subsection (a) (determined without regard to this subsection), or

(ii) the amount equal to $1,100 multiplied by the number of days in the period beginning on the day on which the rehabilitation plan is adopted.

(C) LIABILITY FOR TAX.—

(i) IN GENERAL.—The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

(ii) PLAN SPONSOR.—For purposes of clause (i), the term 'plan sponsor' in the case of a multiemployer plan means the association, commission, trust or other similar group of representatives of the parties who establish or maintain the plan.

(3) FAILURE TO COMPLY WITH REHABILITATION PLAN.—

(A) IN GENERAL.—In the case of a multiemployer plan to which section 432(c) applies, there is hereby imposed a tax on each required contribution under the rehabilitation plan within the time required under such plan.

(B) AMOUNT OF TAX.—The amount of the tax imposed by subparagraph (A) shall be, with respect to each required contribution under the rehabilitation plan, the amount equal to the excess of the amount of such required contribution over the amount contributed.

(C) LIABILITY FOR TAX.—The tax imposed by subparagraph (A) shall be paid by the employer plan to which such required contribution relates under the rehabilitation plan which fails to make the contribution.

(4) REHABILITATION PLAN.—For purposes of this section, the term 'rehabilitation plan' means the plan required to be adopted under section 432(c).

(5) CLEARENCE AMENDMENT.—The table of sections for chapter 43 of subtitle B of title I of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

'Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.'
the distribution or such other time as the second, and third segment rates applied before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe:

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’.

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) the distribution or such other time as the second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe:

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) the distribution or such other time as the second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe:

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) the distribution or such other time as the second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe:

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;

(ii) the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(i) section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for a ‘3-year weighted average of yields’;
(B) SPECIAL RULE RELATING TO BLOCK TRADE.—Subtitle (t) of section 4975 of such Code (relating to other definitions and special rules) is amended by adding at the end the following:

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(8) BLOCK TRADE.—For purposes of subsection (d)(17), the term ‘block trade’ includes any trade which will be allocated across two or more client accounts of a fiduciary.
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(c) BONDING RELIEF.—Section 412(a)(x) of such Code (as amended by subsection (c)(3)) is amended by adding at the end the following:

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(3) by inserting after paragraph (2) as a new paragraph:

'‘(B) no bond shall be required of an entity which is subject to regulation as a broker or dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or an entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including requirements imposed by a self-regulatory organization (within the meaning of section 3(a)(29) of such Act (15 U.S.C. 78c(a)(29) et seq.) or an affiliate with respect to which the broker or dealer agrees to be liable to the same extent as if they held the assets directly.’’
```

(d) EXEMPTION FOR ELECTRONIC COMMUNICATION NETWORK.—

(I) IN GENERAL.—Section 408(b) of such Act (as amended by subsection (b)) is further amended by adding at the end the following:

```
(2) no bond shall be required of an entity which is subject to regulation as a broker or dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or an entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including requirements imposed by a self-regulatory organization (within the meaning of section 3(a)(29) of such Act (15 U.S.C. 78c(a)(29) et seq.) or an affiliate with respect to which the broker or dealer agrees to be liable to the same extent as if they held the assets directly.
```

(e) CONFORMING ERISA'S PROHIBITED TRANSACTION PROVISION TO FERSA.—Section 408(b)(9) of such Code (as amended by subsection (d), further amended by adding at the end the following new paragraph:

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(17)(A) transactions described in subparagraphs (A), (B), and (D) of section 406(a)(1) between a plan and a party that is a party in interest (under section 3(14)) solely by reason of the party in interest (or other person) having an ownership interest in the system or venue described in subparagraph (A), the plan administrator is provided written notice of the execution of such transaction through such system or venue.
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(f) RELIEF FOR FOREIGN EXCHANGE TRANSACTIONS.—Section 408 (b) of such Act (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

```
(2) E FFECTIVE DATE.

(ii) the term ‘foreign exchange transaction’ means a transaction to purchase or sell foreign currency or foreign financial instruments, the terms of which the party in interest (or other person) discovers, or reasonably should have discovered, that the transaction would (without regard to paragraph (B)) constitute a violation of section 406(a).
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(g) DEFINITION OF PLAN ASSET VEHICLE.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following:

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(2) the term ‘plan assets’ means plan assets as defined by such regulations as the Secretary may prescribe not later than the end of the fourth year beginning after the date of the enactment of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052), and by adding at the end the following new paragraph:

'‘(2) the term ‘plan assets’ means plan assets as defined by such regulations as the Secretary may prescribe not later than the end of the fourth year beginning after the date of the enactment of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052), and
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(h) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—

(I) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions, as amended by this Act), is amended by striking “or” at the end of paragraph (16), by striking the period at the end of the paragraph (17) and inserting “, or” before adding at the end the following new paragraph:

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(18) except as provided in subsection (h)(9), a transaction described in subparagraph (A), (B), (C), or (D), a transaction described in paragraph (B) of section 408(a)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the
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SEC. 330. EXERCISE OF CONTROL OVER PLAN ASSETS IN CONNECTION WITH QUALIFIED CHANGES IN INVESTMENT OPTIONS.

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph: ‘‘(4)(C) In any case in which a qualified change in investment options occurs in connection with a participant’s account plan, with the participant or beneficiary shall not be treated for purposes of paragraph (1) as not exercising control over the assets in his account for purposes of paragraph (4)(A) if the requirements of subparagraph (C) are met in connection with such change.’’

(b) FOR PURPOSES OF PARAGRAPH (A), THE TERM ‘‘QUALIFIED CHANGE IN INVESTMENT OPTIONS’’ MEANS, IN CONNECTION WITH AN INDIVIDUAL ACCOUNT PLAN, A CHANGE IN THE INVESTMENT OPTIONS OFFERED TO THE PARTICIPANT OR BENEFICIARY UNDER THE TERMS OF THE PLAN, WHERE—

(i) the participant’s account is reallocated among one or more new investment options which are offered in lieu of one or more investment options offered immediately prior to the effective date of the change, and

(ii) the change in investment options includes characteristics relating to risk and rate of return, are, as of immediately after the change, reasonably similar to those of the existing investment options as of immediately before the change.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act.

SEC. 331. RECOVERY OF REIMBURSEMENT OR SUBROGATION WITH RESPECT TO BENEFITS.

(a) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)) is amended by adding, after paragraph (10), the following new paragraph:

‘‘(10) The amendments to section 404(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(h)) in connection with such change if the requirements of subparagraph (A) are met in connection with such change.’’

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2006.

SEC. 332. GOVERNMENT ACCOUNTABILITY OFFICE FEDERAL PENSION FUNDING REPORT.

(a) IN GENERAL.—The Comptroller General of the Government Accountability Office shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required by this section shall include an analysis of the feasibility, advantages, and disadvantages of—

(1) requiring an employee pension benefit plan to insure a portion of such plan’s total investments;

(2) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry;

(3) amortizing a single-employer defined benefit pension plan’s shortfalls amortization base (referred to in section 383(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1133(c)(3)) as amended by this Act) over various periods of not more than 7 years.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

SEC. 401. INCREASES IN PBGC PREMIUMS.


(1) by striking clause (i) of subparagraph (A) and inserting the following:

‘‘(i) in the case of a single-employer plan, an amount equal to—

‘‘(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

‘‘(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F), plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;’’ and

(2) by adding at the end the following new subparagraph:

‘‘(F) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $50 or the adjusted amount determined under clause (ii);’’

(3) by adding the following new paragraph to subsections (a)(3) and (a)(4) of section 406(b) and section 406(c):

‘‘(I) for plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

‘‘(II) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

‘‘(II) the national average wage index (as so defined for 2004), with such product, if not a multiple of $1, being rounded to the next higher multiple of $10 but not of $1, and to the nearest multiple of $1 in any other case.

(4) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2005 and before 2010, ‘‘(I) except as provided in subparagraph (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table: ‘‘If the plan year begins in: The amount is:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$21.20</td>
</tr>
<tr>
<td>2007</td>
<td>$23.40</td>
</tr>
<tr>
<td>2008</td>
<td>$25.60</td>
</tr>
<tr>
<td>2009</td>
<td>$27.80</td>
</tr>
</tbody>
</table>

‘‘(II) If the plan’s funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such plan year in the following table: ‘‘If the plan’s funding target attainment percentage for the plan year preceding the current plan year is: The amount is:

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 80%</td>
<td>$27.80</td>
</tr>
</tbody>
</table>

SEC. 402. FUNDING STANDARDS FOR PBGC GUARANTEE.

(a) IN GENERAL.—The amendments made by title IV of division A of the Pension Protection Act of 2006 (Public Law 109-280) are amended—

(1) in section 402(b)(1) of such Act (29 U.S.C. 1122(b)(1)), in the table referred to in paragraph (1), by adding the following new row:

<table>
<thead>
<tr>
<th>Plan Year</th>
<th>Premium Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$30.00</td>
</tr>
</tbody>
</table>

(2) in section 402(c)(1) of such Act (29 U.S.C. 1122(c)(1)), in the table referred to in paragraph (1)(A), by adding the following new row:

<table>
<thead>
<tr>
<th>Plan Year</th>
<th>Premium Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$30.00</td>
</tr>
</tbody>
</table>

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.
with such current plan year in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$221,677</td>
</tr>
<tr>
<td>2007</td>
<td>$229,333</td>
</tr>
<tr>
<td>2008 or 2009</td>
<td>the amount</td>
</tr>
</tbody>
</table>

(4) For purposes of this subparagraph, the term ‘funding target attainment percentage’ has the meaning provided such term in section 303(d)(2).

(b) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

"(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (i) or (ii) of section 401(c)(2)(B) or section 402, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately following the period described in clause (i) or (ii) of section 4006(a)(3)(E)(ii)(III)(I) of such Act (29 U.S.C. 1306) were applied by substituting ‘the yields’ for ‘the 3-year weighted average of yields’ as applicable under rules similar to the rules under section 303(h)(2)(B);"

(8) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—If the plan is terminated under section 401(c)(2)(B)(i) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing sponsor of the plan or a member of such sponsor's controlled group has filed or has had filed against such person a petition seeking reorganization in a case in which reorganization is sought, subparagraph (A) shall not apply to such plan unless the date of the discharge of such person in such case.

(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

(i) In general.—The term ‘applicable 12-month period’ means—

(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

(II) each of the first two 12-month periods immediately following the period described in subclause (I),

(ii) Plans terminated in bankruptcy reorganization.—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which such person is discharged in the case described in such clause in connection with such person.

(D) COORDINATION WITH SECTION 4007.—(i) Notwithstanding section 4007—

(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

(II) for plans shall be the person who is the contributing sponsor as of immediately before the termination date.

(ii) The fifth sentence of section 4007(a) shall be the date by which such plan is in such service under the plan to

(2) EFFECTIVE DATES.

(1) IN GENERAL.—The amendments made by subsection (a) and (x)(1) shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—The amendment made by subsection (b) shall apply with respect to any single-employer plan, a summary of the rules governing terminations of single-employer plans under subchapter I of title 11, United States Code, or under any similar law of a State or political subdivision of a State after October 26, 2005.

(3) COORDINATION AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—The amendments made by section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) are amended further—

(1) in clause (iv), by striking ‘‘and’’ at the end;

(2) in clause (v), by striking the period and inserting ‘‘;’’; and

(3) by inserting after clause (v) the following new clause:

"‘(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates.’’."

(e) NOTICE OF FUNDING IMPROVEMENT PLAN OR REORGANIZATION PLAN.—Section 101(f)(3)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (v), by striking ‘‘and’’ at the end;

(2) in clause (vi), by striking the period and inserting ‘‘;’’; and

(3) by inserting after clause (vi) the following new clause:

"‘(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 362 during the plan year to which the notice relates.’’."

(f) NOTICE DUE 90 DAYS AFTER PLAN’S VALUATION DATE.—(1) IN GENERAL.—Section 101(f)(3) of such Act (29 U.S.C. 1021(f)(3)) is amended by striking ‘‘two months after the deadline (including extensions) for filing the annual report for the plan year’’ and inserting ‘‘90 days after the end of the plan year’’;

(2) MODEL NOTICE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall establish model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974.

SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

(a) Additional Annual Reporting Requirements.—Section 103 of the Employee
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, which is maintained by the Secretary on the Internet and other appropriate media. Such information shall also be displayed on any website maintained by the plan administrator on behalf of the plan sponsor on the Internet, in accordance with regulations which shall be prescribed by the Secretary.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL AND FINANCIAL REPORTS.—Section 104(b)(3) of such Act (as amended by subsection (a)) is amended—

(1) by inserting (‘‘A’’) after ‘‘(3)’’; and

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

‘‘(1) I N GENERAL.—Any notice required to be provided under subsection (k) during any 12-month period. The person required to provide such notice shall receive more than one notice described in subparagraph (B) during any one 12-month period. In order to receive a copy of such notice more than once, the person required to provide such notice shall be entitled under this subsection to pay the costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by section 103(b)(2)(B)) is further amended by striking ‘‘sections 101(j), 101(k), and 302(b)(7)(F)(iv)’’ and inserting ‘‘sections 101(j), 101(k), and 302(b)(7)(F)(iv)’’.

(3) REGULATIONS.—The Secretary shall prescribe regulations under sections 101(k) and 302(b)(7)(F)(iv) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1) of this subsection) not later than 90 days after the date of the enactment of this Act.”

NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEmployer Plans—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (g) of this section) is further amended—

(A) by redesignating subsection (1) as subsection (m); and

(B) by inserting after subsection (k) the following new subsection:

‘‘(1) I N GENERAL.—The plan sponsor or administrator of a multiemployer plan shall furnish to any employer who has an obligation to contribute under the plan and who requests in writing notice of—

(A) the amount which would be the amount of such employer’s withdrawal liability under paragraph (1) of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

(B) the average increase in the employer’s total contributions under the plan as of the end of such plan year to participants on whose behalf no employer contributions are payable under the plan, and which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term ‘‘employer contribution’’ means, in connection with a participant, a contribution made by an employer as an employer of such participant.’’

(k) MULTIEmployer PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or any employer having an obligation to contribute to the plan, who so requests in writing—

(A) a copy of any actuarial report received by the plan for any plan year which has been in receipt of the plan for at least 30 days, and

(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt of the plan for at least 30 days.

(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary, and

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

(3) LIMITATIONS.—In no case shall an employer be entitled under this section to receive more than one notice described in paragraph (1) during any one 12-month period. Any such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such 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 further amended by striking ‘‘sections 101(j), 101(k), and 302(b)(7)(F)(iv)’’ and inserting ‘‘sections 101(j), 101(k), and 301(b)(7)(F)(iv)’’.

(i) MODEL FORM.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model form for furnishing information pursuant to paragraphs (1)(A)(i) and (B), and other material required to be provided under section 101(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) (as amended by section 302(b)(7)(F)(iv)) (as amended by section 103(b)(2)(B)) and 302(b)(7)(F)(iv) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(4)(B)) (as amended by section 103(b)(2)(B)).
Retirement Income Security Act of 1974, as amended by this section.

(j) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 503. SECTION 4010 FILLINGS 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. 1301(b)) is amended by striking paragraph (1), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

"(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

"(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

"(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining;

(b) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301) is amended by adding a new subsection at the end of such section:

"(7) SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.

SEC. 3. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTIONS EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.
and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

"(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall make available to plan sponsors and fiduciary advisers for the disclosure of fees and other compensation required in paragraph (1)(A)(ii) which meets the requirements of subparagraph (A).

(2) EXEMPTION CONCERNING ON MAKING REQUIRED INFORMATION AVAILABLE ANNALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—Notwithstanding any provisions of this subsection, and compliance by the fiduciary adviser with the provisions of subparagraph (A), the fiduciary adviser shall be deemed not to have been in a position to request and without charge, to the recipient of the advice, or (C) in the event of a material change to the material change to the material to the material to which the advice would otherwise be provided to the plan sponsor or other fiduciary by the fiduciary adviser to any particular recipient of the advice.

(3) AVAILABILITY OF PLAN ASSETS FOR PAYMENT OF FEES AND OTHER COMPENSATION.—Notwithstanding any provisions of this subsection, a plan sponsor or other fiduciary of the plan may not be liable for the violation of the investment advice referred to in such paragraph if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

(i) to make such currently accurate information available upon request and without charge, to the recipient of the advice, or

(ii) to the plan sponsor or other fiduciary of the plan concerned to provide such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change to the material to which the advice would otherwise be provided to the plan sponsor or other fiduciary by the fiduciary adviser.

(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) has provided the records or other documentation referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406(b) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—(A) A fiduciary adviser subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of paragraph (1) solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) or solely by reason of contracting for or otherwise arranging for the provision of such advice, if—

(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser, the arrangement and the provision of investment advice referred to in section 3(21)(A)(ii) or, solely as a result of the arrangement between the plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) and the fiduciary adviser provided to the plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) by the fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property (including any other property by the fiduciary adviser in connection with the sale, acquisition, or holding of a security or other property) purporting to the advice; and

(ii) by adding at the end the following new paragraph:

"(19) any transaction described in subsection (f)(10)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

(A) TRANSACTIOINS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(19), in connection with the provision of investment advice by a fiduciary adviser, are the following:

(i) the sale, acquisition, or holding of a security or other property (including any other property by the fiduciary adviser in connection with the sale, acquisition, or holding of a security or other property) purporting to the advice; and

(ii) by adding the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or an affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(19)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B)(i), provided to a plan or a participant or beneficiary of a plan referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))) separately only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities.

(iii) by adding at the end the following new paragraph:

"(iii) an insurance company qualified to do business under the laws of a State, or

(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or

(v) an insurance company registered as an insurance company qualified to do business under the laws of a State, or

(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

(5) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3))).

(C) REGISTRED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section for a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section)."

(6) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.
provision of investment advice by the fiduciary.

“(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of advice;”

“(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material effect on the advice or the recipient’s holdings, and that any such advice received by the fiduciary adviser of investment advice referred to in such section,

“(vii) the arrangements for the provision of investment advice by the fiduciary adviser of investment advice referred to in such section,

“(viii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

“(ix) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

(2) Definitions.—For purposes of this paragraph and subsection (d)(19)—

“(I) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

“(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

“(ii) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1816(b)(1))) whose advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

“(iii) an insurance company qualified to do business under the laws of a State, (IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

“(V) an affiliate of a person described in any of subparagraphs (I) through (IV), or

“(VI) an employee, agent, or registered representative of an affiliate described in any of subparagraphs (I) through (V) if such affiliation satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

“(II) AFFILIATE.—The term ‘affiliate’ of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3))).

“(III) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the term ‘broker’ for the term ‘broker or dealer referred to in such section’) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the term ‘investment adviser referred to in such section’).

“(IV) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 1989.

TITLE VII—BENEFIT ACCRUAL STANDARDS

SEC. 701. BENEFIT ACCRUAL STANDARDS.

(a) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) RULES RELATING TO REDUCTION IN RATE OF BENEFIT ACCRUAL.—Section 206(b)(1)(H) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at the end the following new clauses:

“(I) A plan shall not be treated as failing to meet the requirements of clause (i) if a participant’s entire accrued benefit, as determined as of any date under the formula determining benefits in the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

“(II) For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BASED ON ACTUARIAL ASSUMPTIONS.—For purposes of this subpart, a plan is treated as providing for a determinable benefit only if the benefit determination is actuarially determined.

(b) Determinations of Accrued Benefit.—

(TITLE VII—BENEFIT ACCRUAL STANDARDS)
“(f)(1) A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account which is not treated as failing to meet the requirements of subsection (a)(2), section 204(c) (but only in the case of a plan which does not provide for employee contributions) or section 204(g) solely because of the amount actually made available for such distribution under the terms of the plan to project the amount of the participant’s account balance to a date subsequent to normal retirement age is not greater than a market rate of return.

“(2) The Secretary of the Treasury may provide by regulations rules governing the calculation of a market rate of return for purposes of paragraphs (1) and (f) and permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of paragraph (1).

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986—

(1) RULES RELATING TO REDUCTION IN RATE OF BENEFIT ACCRUAL.—Subparagraph (H) of section 411(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clauses:

“(vi) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

“(1) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of clause (i) if a participant’s entire accrued benefit is determined as of any date before the formula for determining benefits set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

“(2) SIMILARLY SITUATED.—For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

“(III) DISORDERED OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee’s opening balance or other transition benefits) shall be disregarded.

“(V) ENTIRE ACCRUED BENEFIT.—In determining the entire accrued benefit for purposes of this clause, the value of any accrued benefit (including any early retirement benefit that is fully or partially included or reflected in an employee’s opening balance or other transition benefits) shall be disregarded.

“(VII) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because it provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title XVIII of the Social Security Act, under the Railroad Retirement Act of 1974, under another plan described in section 401(a) maintained by the same employer, under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof, or under such other arrangements as the Secretary may provide.

“(A) INCREASE IN DEDUCTION LIMIT FOR SINGLE-Employer PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employee’s 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 paragraph (2) (not less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 404(d) of such Act).” before such paragraph;

“(2) by striking “(c)” in section 431(c)(6)(D) each place it appears and inserting “section 431(c)(6)(E)”;

“(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).

“(C) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after June 29, 2005.

TITLE VIII—DEDUCTION LIMITATIONS

SEC. 801. INCREASE IN DEDUCTION LIMITS

(A) INCREASE IN DEDUCTION LIMIT FOR SINGLE-Employer PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employee’s 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 paragraph (2) (not less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 404(d) of such Act).” before such paragraph;

“(2) by striking “(c)” in section 431(c)(6)(D) each place it appears and inserting “section 431(c)(6)(E)”;

“(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).

“(C) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after June 29, 2005.

SEC. 802. DEDUCTION LIMIT FOR SIMPLIFIED ANNUITIZED RETIREMENT ARRANGEMENTS

(A) IN GENERAL.—In the case of a simplified annuitized retirement arrangement under which a plan is treated as a qualified plan and each individual participating in the plan is treated as a separate plan (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

“(2) DEDUCTION LIMIT—The amount determined under this paragraph for any taxable year shall be equal to the excess (if any) of—

“(A) the greater of—

“(i) the sum of—

“(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430, plus

“(II) the lesser of—

“(I) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or

“(II) in the case of a plan that is not in an at-risk status (as determined under section 430(i)), the sum of—

“(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), plus

“(II) in the case of a normal cost plan which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), over

“(III) the value of the plan assets (determined under section 430(g)),

“(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 401 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 404(d) of such Act).

“(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).

“(C) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning after June 29, 2005.

TITLE IX—TECHNICAL AND CONFORMING AMENDMENTS

SEC. 901. TECHNICAL AND CONFORMING AMENDMENTS

(A) 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”.

(B) Section 404(a)(1)(B) of such Code is amended—

“(1) by striking “in the case of a plan” and inserting “in the case of a multiemployer plan”;

“(2) by striking “section 412(c)(7)” each place it appears and inserting “section 431(c)(6)”;

“(C) by striking “section 412(c)(7)(B)” and inserting “section 431(c)(6)(D)”;

“(D) by striking “section 412(c)(7)(A)” and inserting “section 431(c)(6)(A)”;

“(E) by striking “section 412” and inserting “section 431”;

“(F) Section 404(a)(1) of such Code is amended by striking paragraph (4) and inserting—

“(A) in subparagraph (a)(1)(A), by striking “for the plan year” and all that follows and inserting “which are multiemployer plans
for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year,”;

(b) by striking “section 412(i)’’ in the last sentence of subparagraph (A) and inserting “paragraph (1)(D)(ii)” and

(c) by striking subparagraph (D) and inserting:“D. INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.”;

(5) Section 404A(g)(3)(A) of such Code is amended by striking “paragraphs (3) and (7) of section 412(c)” and inserting “sections 436(h)(1) and 432(c)(3) and (6)”;

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

SEC. 902. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.

(a) In general.—Subparagraph (C) of section 401(k) 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 which are not multiemployer plans for the plan year which ends with or within such taxable year (or for any prior plan year), and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year,”;

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:“(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 4980A(w) as does not exceed the amount of contributions described in section 401(m)(4)(A), or,”;

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

TITLE IX—ENHANCED RETIREMENTS SAVINGS PLAN AND DEFINED CONTRIBUTION PLANS

SEC. 901. PENSIONS AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS OF THE GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 MADE PERMANENT.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the provisions of, and amendments made by, titles (A) through (F) of title VI of such Act (relating to pension and individual retirement arrangement provisions).

SEC. 902. SAVERS CREDIT.

(a) PERMANENCY.—Section 25B of the Internal Revenue Code of 1986 (relating to elective deferrals of IRA contributions by certain individuals) is amended by striking subsection (h).

(b) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—(1) Section 25B of such Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:“(h) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

“(1) In general.—So much of any overpayment under section 6401(b) as does not exceed the amount allowed as a tax credit under section 25B(c) shall apply to the payment of the tax attributable to the overpayment of the tax credit.

“(2) Applicable retirement plan.—For purposes of this subsection, the term ‘applicable retirement plan’ means any eligible retirement plan designated by the individual, except that in the case of a joint return, each spouse shall be eligible to participate in the applicable retirement plan with respect to payments attributable to such spouse.

“(3) Magnified contributions.—For purposes of this subsection, the term ‘magnified contributions’ means the amount attributable to the deferral of any contributions to 1 or more defined contributions to a qualified retirement plan with respect to payments attributable to such spouse.

“(4) Effective date.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2006.

SEC. 903. INCREASED PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) In general.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end of the section the following new subsection:“(3)(A) A uniformed automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(iv).“(B) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term ‘uniformed automatic contribution arrangement’ means any arrangement which meets the requirements of paragraphs (3)(A)(iv) through (F) of subparagraph (C).

(b) FORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code 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 which are not multiemployer plans for the plan year which ends with or within such taxable year (or for any prior plan year), and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year,”;

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

TITLES X—CREDIT TO AMERICAN INCOME TAXPAYERS

SEC. 1001. INCREASED CREDIT FOR LOW INCOME TAXPAYERS.

(a) In general.—The personal credit allowed by section 34(b)(1) of the Internal Revenue Code of 1986 (relating to tax credit for low income taxpayers) is increased by—

(1) For each exemption claimed on a joint return, an additional credit equal to $250 shall be allowed; and

(2) For each exemption claimed on a joint return, an additional credit equal to $250 shall be allowed.

(b) Phase-out.—The credit allowed by subsection (a) shall not be allowed to a taxpayer if the taxpayer is a taxpayer who is a member of a joint return if—

(1) the taxable income of the joint return exceeds $60,000, or

(2) the taxpayer is a member of a joint return if the taxable income of the joint return exceeds $60,000.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 1002. INCREASED CREDIT FOR LOW INCOME TAXPAYERS.

(a) In general.—The personal credit allowed by section 34(b)(1) of the Internal Revenue Code of 1986 (relating to tax credit for low income taxpayers) is increased by—

(1) For each exemption claimed on a joint return, an additional credit equal to $250 shall be allowed; and

(2) For each exemption claimed on a joint return, an additional credit equal to $250 shall be allowed.

(b) Phase-out.—The credit allowed by subsection (a) shall not be allowed to a taxpayer if the taxpayer is a member of a joint return if—

(1) the taxable income of the joint return exceeds $60,000, or

(2) the taxpayer is a member of a joint return if the taxable income of the joint return exceeds $60,000.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.
“(11) The notice shall not be treated as meeting the requirements of clause (i) with respect to a participant unless—

(i) the notice includes an explanation of the participant’s rights and obligations under the arrangement which is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(ii) the employee has a reasonable period of time after receipt of the notice described in subclause (I) and before the employee affirmatively elects not to have such contribution made or affirmatively elects not to have the employer make such contribution is made to either such election.”

(b) Matching Contributions.—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (12A) and by inserting after paragraph (11) the following new paragraph:

“(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the arrangement—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) makes the requirements of paragraph (11)B.

(11)B) The term ‘qualified automatic contribution arrangement’ means an arrangement—

(i) which meets the requirements of subparagraph (C),

(ii) which is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(iii) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash, and

(iv) under which such contributions are invested in accordance with regulations prescribed by the Secretary.

The regulations prescribed pursuant to subparagraph (A)(v) shall provide guidance on the appropriate mix and allocation of the default investments made under such plan and on the regulation of the exercise of the participant’s rights and obligations under the arrangement which is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(i) the term ‘automatic contribution arrangement’ means an arrangement—

(ii) which meets the requirements of subparagraph (C),

(iii) under which the participant is treated as having elected to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash, and

(iv) under which such contributions are invested in accordance with regulations prescribed by the Secretary.

(12) The term ‘qualified automatic contribution arrangement’ means an arrangement—

(A) which meets the requirements of subparagraph (C),

(B) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash, and

(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary.

The regulations prescribed pursuant to subparagraph (A)(v) shall provide guidance on the appropriate mix and allocation of the default investments made under such plan and on the regulation of the exercise of the participant’s rights and obligations under the arrangement which is written in a manner calculated to be understood by the average participant to whom the arrangement applies.
“(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

(i) the notice includes an explanation of the process under which the arrangement is made not to have elective contributions made on the participant’s behalf (or to elect to have such contributions made at a different percentage);

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election; and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to any 2-year period beginning after December 31, 2005.

SEC. 904. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.

(a) In General.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new paragraph:

“(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY;

“(i) AMOUNT DISTRIBUTED MAY BE REFUNDED.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan not to exceed the aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

“(ii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term ‘qualified reservist distribution’ means any distribution to an individual if—

(I) such distribution is from an individual retirement plan, or from amounts attributable to such plan, that is made in connection with elective deferrals described in subparagraph (A) or (C) of section 402(c)(3) or section 501(c)(18)(D)(iii); and

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call to active duty and ending at the close of the active duty period.

“(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subsection.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by inserting “or” at the end of subclause (III), by striking “and” at the end of subclause (IV) and inserting “or”, and by inserting after subclause (IV) the following new subclause:

“(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and”.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting “which is a distribution to which section 72(t)(2)(G) applies” after “distributee”.

(3) Section 403(b)(11) of such Code is amended by striking the period at the end of subparagraph (B) and inserting “; or”, and by inserting after subparagraph (B) the following new subparagraph (C):

“(C) for distributions to which section 72(t)(2)(G) applies.”.

(c) EFFECTIVE DATE: WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is made or is allowed if claim therefor is filed before the close of such period.

SEC. 905. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PELALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.

(a) In General.—Section 72(t)(2)(C) of the Internal Revenue Code of 1986 (relating to section 72(t) distributions from qualified retirement plans) is amended by adding at the end the following new subsection:

“(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(i) In General.—Distributions to an individual who is a qualified public safety employee for purposes of this title or from amounts attributable to such employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

“(ii) Definitions.—For purposes of this subparagraph—

(1) DROP BENEFIT.—The term ‘DROP benefit’ means a feature of a governmental plan which is designed to provide, to one or more designated beneficiaries, an employee who is a qualified public safety employee for purposes of this title, a right to receive an annuity as a direct trustee-to-trustee transfer is made to an individual who is the surviving spouse of the employee.

(2) QUALIFIED PUBLIC SAFETY EMPLOYEE.—The term ‘qualified public safety employee’ means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services in an area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receives immediate retirement benefits.

“(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 906. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEDUCTIBILITY OF CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.

(a) In General.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includable in an individual’s gross income which is a combat zone benefit shall be determined without regard to section 112.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 907. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.

(a) In General.—Subsection (f) of section 408(d) of the Internal Revenue Code of 1986 (relating to other distributions) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.—In the case of an individual—

(A) who is disabled (within the meaning of section 223), and

(B) who has not attained the applicable age (as defined in section 408(a)(9)(H)) before the close of the taxable year, subparagraph (B) of subsection (b)(1) shall not apply.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 908. IRA ELIGIBILITY FOR THE DISABLED.

(a) In General.—Subsection (f) of section 408 of the Internal Revenue Code of 1986 (relating to other definitions and special rules), as amended by this Act, is further amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(9) Special rule for certain disabled individuals.—In the case of an individual—

(A) who is disabled (within the meaning of section 223), and

(B) who has not attained the applicable age (as defined in section 408(a)(9)(H)) before the close of the taxable year,

(i) the transfer shall be treated as an eligible rollover distribution for purposes of this section,

(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 408(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(c) CERTAIN TRUSTS AND OTHER BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.”.

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(2) Section 403(a) Plans.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting “and (11)” after “(7).”

(3) Sec. 401(k) Plans.—Subparagraph (B) of section 401(k)(8) of such Code (relating to rollover amounts) is amended by striking “and (9)” and inserting “, (9), and (11)” after “(7).”

(4) Section 407 Plans.—Subparagraph (B) of section 407(e)(16) of such Code (relating to rollover amounts) is amended by striking “and (9)” and inserting “, (9), and (11)” after “(7).”

(b) The amounts made by this section shall apply to distributions after December 31, 2005.

TITLe X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

SEC. 1001. THE EXCLUSION FROM GROSS INCOME OF CERTAIN HEALTH CARE CONTRACTS.

The amendment made by this section shall apply to distributions after December 31, 2005.

(a) Requirement of Reporting.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludable from gross income under section 72(t)(1)(A)(ii) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

(1) the amount of the aggregate of such charges against each such contract for the calendar year;

(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

(3) the name, address, and TIN of the individual who is the holder of each such contract.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(2) Clerical Amendment.—The table of sections for subpart B of part III of subchapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

“Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.”.

(c) Treatment of Policy Acquisition Expenses.—Subsection (e) of section 68B of such Code (relating to taxation of classification of contracts) is amended by adding at the end the following new paragraph:

“(5) A contract purchased by an employer (or an individual on or before December 31 of the year following the calendar year for which the return under subsection (a) was required to be made).

(2) the information required to be shown on the return with respect to such individual.

(3) the name, address, and phone number of the individual whose name is required to be set forth in such return.

(4) The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(2) The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Treatment of Policy Acquisition Expenses.—Subsection (e) of section 68B of such Code (relating to taxation of classification of contracts) is amended by adding at the end the following new paragraph:

“(5) A contract purchased by an employer (or an individual on or before December 31 of the year following the calendar year for which the return under subsection (a) was required to be made).

(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Treatment of Policy Acquisition Expenses.—Subsection (e) of section 68B of such Code (relating to taxation of classification of contracts) is amended by adding at the end the following new paragraph:

“(5) A contract purchased by an employer (or an individual on or before December 31 of the year following the calendar year for which the return under subsection (a) was required to be made).

(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Treatment of Policy Acquisition Expenses.—Subsection (e) of section 68B of such Code (relating to taxation of classification of contracts) is amended by adding at the end the following new paragraph:

“(5) A contract purchased by an employer (or an individual on or before December 31 of the year following the calendar year for which the return under subsection (a) was required to be made).

(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.
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SEC. 1002. DISPOSITION OF UNUSED HEALTH AND DEPENDENT CARE BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) In General.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (b) and (i) as subsections (i) and (1), respectively, and by inserting after subsection (g) the following:

"(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH AND DEPENDENT CARE BENEFITS.—

"(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because under such plan qualified benefits include—

"(A) a health flexible spending arrangement under which not more than $500 of unused benefits under such arrangement may be—

"(i) carried forward to the succeeding plan year of such health flexible spending arrangement, or

"(ii) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 221(d)) maintained for the benefit of the employee,

"(B) a dependent care flexible spending arrangement under which not more than $500 of unused benefits under such arrangement may be carried forward to the succeeding plan year of such dependent care flexible spending arrangement,

"(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term ‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 105(c)) that are a qualified medical expense (as defined in section 105(f)) for the taxable year

"(3) DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term ‘dependent care flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for dependent care assistance which meets the requirements of section 129(d).

"(4) UNUSED BENEFITS.—For purposes of this subsection, with respect to an employee, the term ‘unused benefits’ means the excess of—

"(A) the maximum amount of reimbursement that may be provided to any employee for a taxable year under a health flexible spending arrangement or the dependent care flexible spending arrangement, as the case may be, over

"(B) the actual amount of reimbursement for such year under such arrangement.

"(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

SEC. 1003. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.

(a) In General.—Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees’ trust) is amended by adding at the end the following new subsection:

"(l) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

"(1) IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year, the gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, and dependents, by an accident or health plan, a long-term care plan, or by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

"(2) SPECIAL RULE.—For purposes of this subsection—

"(A) DIRECT PAYMENT BY INSURER REQUIRED.—Paragraph (1) shall apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)(8)).

"(B) QUALIFIED HEALTH INSURANCE PREMIUMS.—The term ‘qualified health insurance premiums’ means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)(8)).

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 2005.

TITLE XI—GENERAL PROVISIONS

SEC. 1101. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) In General.—If this section applies to any pension plan or contract amendment—

"(1) Distributions from a governmental plan to employees who are members of a qualified health benefit trust, an annuity trust, or an insurance contract (as defined in section 7702B(b)(8)) of the Internal Revenue Code of 1986 shall not be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

"(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 414(d)(6) of the Internal Revenue Code of 1986 and section 204(a) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

"(1) In General.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

"(A) pursuant to any amendment made by this Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under section 412 or section 501 of the Employee Retirement Income Security Act of 1974.

"(B) on or before the last day of the first plan year beginning on or after January 1, 2008.

"(2) In General.—For purposes of paragraph (1) such plan distributed in order to pay for qualified health insurance premiums.
Madam Speaker, throughout this debate I have been struck by the magnitude of the crisis we face. We have seen at some airlines and health plans for the past several years. We have the PBGC’s debt could balloon even further than its current $23 billion. Even though no taxpayer funds fund Medicare and let the private sector resolve the problems. If you have a prescription drug problem and you want to fix it, let the private sector do it. The Social Security system, if people have relied on their government when they are older or disabled, do not let the government do it. Give the money to the private sector; let them compete and let them do it. The Social Security system, if people have relied on their government when they are older or disabled, do not let the government do it. Give the money to the private sector; let them compete and let them do it. The Social Security system, if people have relied on their government when they are older or disabled, do not let the government do it. Give the money to the private sector; let them compete and let them do it. The Social Security system, if people have relied on their government when they are older or disabled, do not let the government do it. Give the money to the private sector; let them compete and let them do it.
Now we have a bill before us where these pension plans would be a heck of a lot better if we did nothing, rather than do the harm that we are about to do to them. The demands that are going to be made on employers to reach something the increase of 240 percent in the work contributions to these plans will cause many of them to drop the plan and go into bankruptcy. The whole idea of how much revenue we are going to lose, some $70 billion, is not even an issue, if at the end of the day enough sweetheart nips and tucks were given to a handful of people so that we would be assured that the days of defined benefit pensions are just about over.

Some people will have to make political choices today in terms of support of this because there are some vested interest people that need short-gain satisfaction. But at the end of the day, the same way people regret their votes for the Gulf of Tonkin Resolution, they will have to come back and ask did they do more damage than good on today. If you look at actuaries and people who have studied this, they realize that so few pensions are now protected by the PBGC, and in the future many less will be protected.

So, Madam Speaker, these bills are not brought up just to become law. Many of the bills that are coming to this floor are brought to see which people are going to vote against the title of the bill and pay a price for that at the polls, or whether some are secure of the bill and pay a price for that at the polls. I mean, some are going to vote against the title of the bill that in the long term is going to adversely affect our workers.

At this time with the House permission, I would like to turn the balance of my time to Congressman CARDIN from Maryland who has spent a lot of time on pensions and can share with the House the pitfalls that we have in this bill before the House today.

I yield the balance of my time to Congressman CARDIN.

The SPEAKER pro tempore. Without objection, the gentleman from Maryland will control the balance of the time.

There was no objection.

Mr. BOEHNER. Madam Speaker, I yield 4 minutes to the gentleman from Texas (Mr. SAM JOHNSON), the chairman of the Employer-Employee Subcommittee of the Education and Workforce Committee.

Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend this time.

Mr. SAM JOHNSON of Texas. Madam Speaker, I have the honor of chairing a subcommittee that has jurisdiction over pension law and being an original sponsor of the Pension Protection Act. As a member of both the Committee on Education and the Workforce and the Ways and Means Committee, we have been working for the last 2 years to get a pension bill to the House floor, and I am proud to rise in strong support of the bill.

The Pension Protection Act is good and it is tough. Our bill makes companies put their money behind their promises and keep employees well informed on the health of their pension plans.

While this bill is tough, it does not go overboard with more red tape that has almost killed traditional pension plans. Even red tape that currently binds up these pension plans, there still are some loopholes in current law that have allowed companies to run away from their responsibilities and dump pension promises onto the Pension Benefit Guaranty Corporation.

The PBGC says it is $25 billion in the hole, and they say that, with expected terminations, they are close to $28 billion. Our bill will tighten up pension laws so that companies making promises to employees for their retirement security actually put the money behind their promises.

It is a shame our pension laws have allowed those most directly affected, the workers and retirees, to be left unaware that there may be little money behind the promises of a secure retirement. United Airlines’ pilots’ pension plan was only 30 percent funded when it was dumped on the government.

Those pilots and their families did not know how bad the situation was, and they are the ones that are now trying to figure out how to live on one-third of what they had planned to receive.

Our bill requires a company to tell their employees that they are not going to cut their pension plans, and that those plans are not age discriminatory. We have in this bill before the House the pitfalls that we have heard over and over again that companies need predictability and stability in their plans. We need to get this bill enacted so that companies put their money behind their promises so they can plan with certainty in the long term. Support this bill.

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

Madam Speaker, the objective of this legislation should be to encourage the retention and expansion of traditional defined benefit plans. Traditional defined benefit plans generally offer a guaranteed benefit to the worker and, they are generally well managed and diversified. The passage of this bill, in my view, will set up a conference report that will come back to us that will accelerate the termination of well-funded and managed traditional defined benefit plans. And I say that for three reasons.

Three parts of this legislation will adversely affect well-funded and managed plans. First, the funding roles are more costly and more restrictive. That in and of itself will act as a disincentive for continuation of these plans.

Second, there is a failure to include relief for the airline industry by putting pressure on well-funded and managed plans to pick up the costs for other industries, questioning whether they should stay and provide these plans.

Third, we continue to allow companies to go into bankruptcy in order to dump their costs onto the PBGC, once again affecting those well-funded plans that are going to be asked to pick up the tab.

Well, these reasons this legislation is likely to accelerate the termination of plans that we would want to see continued. The termination of these plans will just adversely affect the funding of the PBGC, the guaranteed fund, complicating the situation and making it worse.

Madam Speaker, I want to point out that there are provisions in this legislation that are very good. The provisions dealing with the defined contribution provisions are needed and, as it was pointed out in the Ways and Means Committee, contain many of the provisions that were worked on through the Portman-Cardin process as...
Mr. GEORGE MILLER of California. Madam Speaker, I yield myself 5 minutes.

Madam Speaker, when we are starting to deal with the pension plans that protect America’s retirements, one of the things we should not make a decision not to do any harm. But the fact of the matter is that this bill makes things worse in many ways for many pensioners in this country and many future pensioners.

First and foremost, we created the Pension Benefit Guaranty Corporation to be there to protect some of the retiree benefits of people if pension plans went bust or the corporations went bust. We are now told that this legislation makes that problem worse.

The speaker who was just in the well said there was some $23 billion in deficit in that plan. And what we now see is a Pension Benefit Guaranty Corporation plan, the retirement arm of the company. The Office of the Actuary tells us that this makes it at least $9 billion worse over the next decade. So while we narrow the deficit, in fact we see that we increase this agency’s deficit problems.

This is an agency that can look out into the future and can see up to $100 billion of liabilities possibly coming their way. Maybe some of them will not come because of this bill, but many of them will come because of this bill, because this bill, in fact, makes it easier, makes it easier to terminate plans. It makes it easier to put plans into bankruptcy. It certainly does not make it any more difficult to put into bankruptcy. It certainly does not make it easier to put into bankruptcy. It certainly does not make things any easier. It certainly does not make things any easier.

What does that mean? That means we are going to have less of the kind of retirement that they had anticipated because of the acceleration of terminations, because of the acceleration of the freezing of the plans and because of the ease which you can now go and apparently the acceptability in the business community of entering bankruptcy.

We changed the personal bankruptcy laws in this Congress because we said people were using it as a convenience. It is interesting now that the corporations have decided that we will use it as a convenience to redesign themselves, to reconfigure themselves to reinvent themselves. If United Airlines is the model, the only losers will be the workers and the retirees in those corporations.

That is what this legislation does. It makes those kinds of decisions much easier, much easier for the companies to do that.

What does that mean? That means that America is going to end up with a poorer retired population than they had before. That means that these people are going to have less of the kind of retirement that they had anticipated because of the acceleration of terminations, because of the acceleration of the freezing of the plans and because of the ease which you can now go and apparently the acceptability in the business community of entering bankruptcy.

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That is what this legislation does not do. It does not really speak to trying to make sure that we could do all that we can to secure the retirement of current workers and of future retirees.

I would urge my colleagues to vote against this legislation when we get to that vote and understand that we should not be making the problems of America’s pensioners even worse than they are today.

Mr. Speaker, we are facing a serious pension crisis that has already cost employees across the Nation billions of dollars in lost benefits—benefits they were told were irrefutable. If you calculate just the losses employees suffered in the Nation’s four largest pension terminations, it exceeds $6 billion in earned defined benefit promises.

Let’s be clear what is happening to our retirement system—this Enron the sequel. This...
is Enron 2 with a vengeance. This is a national disgrace.

This bill does absolutely nothing about companies who decide to use the Federal Government to dump and run on their promises to employees. Exploiting loopholes in our pension and bankruptcy laws, clever lawyers and turnkey contractors have indeed turned a Federal Agency that was supposed to be a last resort for companies that were closing shop, into a dumping ground for companies to ditch unwanted promises to reward investors at the expense of employees and taxpayers. So powerful is this gaping hole in our pension and defined benefit plans. Here is what the GAO calculated would be up to a 50 percent cut in their benefits. These angry constituents—denied the courtesy of even a single hearing before the Education and Workforce Committee—participated in an online hearing Democrats sponsored. Over 1,000 participated in this online hearing and their powerful voices were heard.

They wrote to us about the personal and financial devastation resulting from the loss of promised benefits, and the lost opportunity to earn future benefits. Listen to Kenneth Schmidt, employee of United from Goodyear, AZ, who wrote:

Dear Congressmen,

I had worked for United for 38 years when I retired in February of 2003. My job as a mechanic was always a source of pride to me. I worked midnights for many years, with doing so I missed out on many family gatherings, holidays, etc. This was what I chose to do in life, and I did it with no complaints. But, now I am faced with large cuts to my retirement benefits. My job as a mechanic was always a source of pride to me. I worked midnights for many years, with doing so I missed out on many family gatherings, holidays, etc. This was what I chose to do in life, and I did it with no complaints. But, now I am faced with large cuts to my retirement benefits. My job as a mechanic was always a source of pride to me. I worked midnights for many years, with doing so I missed out on many family gatherings, holidays, etc. This was what I chose to do in life, and I did it with no complaints. But, now I am faced with large cuts to my retirement benefits.

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Mr. Chairman, the sponsors of H.R. 2830 have referred to their reformat bill. They say it will reform the Pension Benefits Guaranty Corporation that’s already $23 billion in the red and going up. And they say it will turn around $450 billion in undefunded reporting by the Nation’s pension plans. In truth, this bill not only fails to tackle pension reform, it actually hastens the unraveling of the PBGC and defined benefit plans. Here is what the Congressional Budget Office says about this bill: “H.R. 2830 would actually increase the PBGC’s 10 year net costs by $9 billion, or by about 14 percent compared to what it would have been.” The bill would have been $3 billion. The bill would have been $3 billion. The bill would have been $3 billion.

How can a bill be reforming a system if it is increasing the PBGC’s red ink over current law? It can’t, and that’s why this bill is a sham.

This bill also repeals two long-standing, bedrock protections for employees that, if permitted to pass, will haunt employees for years to come.

First, this bill overrides discrimination laws against older, existing workers for cash balance plans without any transition protections. It means that older workers will face up to what the GAO calculated would be up to a 50 percent cut in their benefits. These angry constituents will be calling the offices of Members of Congress in droves—just like thousands of IBM employees who spent years seeking to rectify deep cuts in pension benefits from a cash balance conversion. They will ask why Congress permitted companies to slash their benefits with no transition protections, no option to have traditional plans with no legal recourse. Tough luck to them, according to H.R. 2830. By contrast, the bipartisan Senate bill has significant protections for older workers, but this bill rejects them all.

This bill also is larded up with lots of special interest perks, but none as pernicious as the repeal of the longstanding prohibition on conflicted investment advice. Federal pension law has always required investment advice to employees to be on the level—free from self-interest, tainted financial advice. No more. This bill gives a sweetheart deal to investment houses to send conflicted investment advice to employees so long as they disclose to them that fact is in. And of course, it ignores years of mutual fund financial scan-
dals involving padded fees and commissions, secret market timing, late trading, and more uncovered by the SEC, Elliot Spitzer, and other state attorneys general.

Here is what Arthur Levitt, former SEC chairman, says about the Boehner/Thomas in-

I have reservations when . . . . advice comes from the very same mutual fund company whose products are for sale to a plans participants. One of mutual parties with no axe to grind. Financial journalist Jane Bryant Quinn and NY Attorney General Elliot Spitzer have also expressed strong opposition to this change.

As amazing that we don’t lift a finger for the Ken Schmids of the world, but we pull out all the stops to reverse a 30-year bedrock protection for employees for mutual funds and investment firms’ lobbyists. By contrast, the Senate bill does not include this repeal and goes further to actually strengthen the independent advice employees receive.

This bill does nothing to ensure fair treatment between workers and executives. Under this bill, an employer would get to fund its pension plan above 80 percent, then the workers get punished by benefit limits. What’s the penalty for the executives who ran the plan down between 60 percent and 80 percent? Zero? If an employer does not fund above 60 percent, the bill requires more benefits limits for workers. For executives, only a weak provision for new executive compensation, with loopholes that allow the companies to promise future golden parachutes.

This bill doesn’t reform our pensions; it actually worsens the pension crisis according to two independent Federal agencies. Rather than encouraging companies to keep their defined benefit plan in place, it encourages companies to freeze, downgrade or drop their pension plans altogether. It gives the green light to companies who want to dump and run, and opens new loopholes for mutual funds to steer employees into investments that feather their own nests at the expense of employees. It overrules age discrimination laws to slash the pensions of older workers and other existing employees. And it launches new, punishing benefit limits for employers of underfunded pension plans, while letting the very executives who ran the company and the pension plan into the ground off the hook. And it does nothing to address the urgent crisis of our airline companies and employees—where jobs and the hard-earned retirement benefits of hundreds of thousands of Americans hang in the balance.

I urge you to oppose this bill. Madam Speaker, I reserve the balance of my time.

Mr. BOEHNER. Madam Speaker, I yield myself 3 minutes, and I yield to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Madam Speaker, would the chairman engage in a colloquy with me and my colleague, the gentleman from Minnesota (Mr. KLINE), concerning the difficulties facing the airline industry, particularly in terms of assisting airlines and that they fulfill their pension promises to their employees?
Mr. PRICE of Georgia. As you and I are both aware, the airline industry continues to amass losses as the industry strives to become more dynamic, both externally and internally. Losses during the last 4 years have proven that the business model used by legacy carriers was outdated but unable due to high-fuel prices and post-9/11 repercussions.

A primary component playing into the equation of legacy carrier viability is the pension systems currently in place. A model of defined benefit pension plans and the rules associated with it have come under scrutiny as two legacy carriers, making up approximately 20 percent of the domestic airline market, recently terminated their employee pension plans.

There are no winners when airlines default on their pension plans. Employees now are planning for a retirement with a fraction of what they were originally promised, and further, the Pension Benefit Guaranty Corporation, the government agency and guarantor of all pension plans, is put more and more into the red, and taxpayers are exposed to greater risk. Eventually, the point will be reached when taxpayers have to bail out the PBGC if no action is taken.

With these concerns in mind, I would ask the chairman to agree to work with me and the gentleman from Minnesota (Mr. KLINE) to develop a process, as the Senate has done, to provide airlines with the flexibility needed to fund their defined benefit pension systems over a long amortization period. I believe it is critical that we join with the Senate in this effort and through the conference process to develop final legislation that contains industry-specific reform for the airlines.

Mr. BOEHNER. Madam Speaker, reclaiming my time, as has been the case all year, the lines of communication between those of us that are interested in this, both on and off the committee, and those on the other side of the aisle as well, the lines of communication are open and will remain open. As we move into conference, the process, I remain committed to ensuring that the concerns of all stakeholders involved are addressed in a bi-partisan fashion as we complete action on comprehensive reforms in an expeditious manner.

I remain committed, as I believe both of my colleagues do, that airlines do, and that we need to find a solution that will allow airlines to maintain their plans and ensure employees of both plans are adequately funded. Madam Speaker, I reserve the balance of my time.

Mr. CARDIN. Madam Speaker, I am pleased to yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

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

Mr. MCDERMOTT. Madam Speaker, this bill moves that the Republicans are not just after poor people. This pension bill boils down to one fundamental principle: The Republicans want all Americans, including flight attendants and everybody else out there, to be entirely alone, isolated from the strength and compassion of American values.

I am here to say that this pension bill that forces elderly Americans into solitary confinement is abusive, irresponsible, and morally bankrupt. This whole year has been about doing it to people. Get rid of Social Security, privatize it, put them on their own. Medicare: Privatize it, put them on their own. Now we have the pension bill: Privatize it, put them on their own.

Take away the union benefit, how will they do it? They are going to Boeing. They squeeze Boeing tight, and Boeing flips into 401(k), and there goes the pension down the drain.

Now this raises the question, what is wrong with you people? We decided a long time ago in this country that there was strength in numbers. We had to do things together. That is why Social Security was developed. That is why Medicare was developed. That is why the PBGC was developed.

The Republican vision articulated in this bill is that America is a sinking ship, and the shout is for every man and woman, you are on your own. They call it an ownership society. You will still have a pension; it will be a 401(k). But it really means you are on your own. If you can figure out the market, good luck, baby.

There are not enough lifeboats in the water, and we know that, and everybody is jumping off the ship. In 1980, 40 percent of Americans had a pension. Today, only 20 percent do. Now, that is a 50 percent reduction in 20 years, and the pensions that are provided, fewer provide a guaranteed benefit than they used to get.

So what do we have left? The stark fact is that half of America’s retirees have less than $15,000 income. Imagine living in the United States on $15,000 after working for 45 years. Only 50 percent of Americans will have any retirement savings at all, but if they do have not have a benefit from the pension and their Social Security, which has not been ripped away from them, they got nothing.

Half of the households who have savings have an average $385 a month. So they get their Social Security, $1,800 a month at the maximum, and $385, oh, they are living fat on $2,000 a month.

The people without any savings are disproportionately poor, have nothing except Social Security, and the Republicans, as I say, tried to take that away earlier in the year. We beat them on that, and we should beat them on this. This is the definition of financial freedom that Republicans want for Americans: They want riskier pensions and no way for anybody to be sure of anything. I urge my colleagues to vote no on this.

Mr. BOEHNER. Madam Speaker, I am pleased to yield 1½ minutes to the gentleman from Louisiana (Mr. BOUSTANY), a member of our committee.

Mr. BOUSTANY. Madam Speaker, I rise in strong support of this bill. This bill strengthens our Nation’s retirement system and comes at a critical time as economic conditions are requiring companies to confront new challenges. This legislation provides steps to help employers plan and manage finances accurately, to determine pension liabilities and to ensure pensions are funded and benefits are paid.

I want to discuss an important section of the bill regarding multi-employer pension plans. Under current law, multi-employer pension plans are loosely regulated and have few requirements for timely disclosure of information.

For the first time ever, beneficiaries and contributing employers of these multi-employer pension plans will have transparent information to make accurate funding decisions. The legislation creates a system for identifying financially troubled plans and improving their funding status.

Furthermore, new notice and disclosure requirements will provide participants with clearer and more specific financial information. Workers and retirees must be provided with an annual update on the plan’s assets, liabilities, financial condition and funding policies. Underfunded plans are required to file financial information with the PBGC and provide notice to workers and retirees. Existing financial disclosures must be updated to provide more information, particularly about plan mergers and actuarial assumptions.
Mr. Chairman, as I have told you before, my father worked in the manufacturing business as an employee for over 20 years. He was a member of the steel workers, and one day when I was in high school, he came home and was out of a job, which is traumatic enough, but he was also out of a pension.

Today, employers and employer groups can work together to provide shutdown benefits to employees and to families, and my hope is that your commitment still stands, as it has, that we will work, particularly with the steel industry as we have done with the auto industry, to make sure that shutdown benefits remain a vital option for employers.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Madam Speaker, America's workers know that a defined pension plan is a promise from their employer, a promise that, when they retire, they will receive a benefit they can rely on. In fact, they have planned their retirement future on that promise. This bill allows companies to break that promise. It allows companies to switch midstream to cash balance plans, ignoring that promise to their workers.

These workers have trusted that this benefit will be there. It will be there at the end of their working lives. In fact, these workers have quite often given up pay raises or other benefits for their retirement security. These pension benefits have been earned. They have been promised. They must be honored.

Actually, earlier this year, the Republican majority tried but failed to destroy the Social Security system by going back on their promise to every American that at a certain age they would receive a defined benefit, a benefit they could count on.

Americans overwhelmingly stood up to the Republicans and said Social Security is ours, you promised it, we rely on it, you cannot have it.

So the Republican majority could not take Social Security away from Americans with privatization. Now, they are trying to pull the rug out from under people who have dedicated their lives working hard for their companies.

Many of these workers were promised defined retirement benefits. They earned those benefits, and this Congress cannot allow companies to go back on their word. We must ensure that these hardworking Americans get the pension benefits they have been promised that they have earned.

I urge my colleagues to oppose H.R. 2830, Protect American pensions.

Mr. BOEHNER. Madam Speaker, I yield myself such time as I may consume to my colleague the gentleman from Ohio (Mr. TIBERI).

Mr. TIBERI. Madam Speaker, I appreciate the chairman rising to engage me in a colloquy.

I would like to thank both you and Chairman THOMAS for your work on this bill. As you remember, back during the committee, I spoke about shutdown benefits and appreciate the work that you and Chairman THOMAS have done in the last couple of days to deal with stakeholders in that industry. However, I believe that the bill does not quite go far enough, I believe, in helping everybody in every industry to compete. I think this relief is long overdue, and it is the principle reason that I will vote to send the bill along to conference.

The second reason is I think conference will finally be the forum where some of the serious flaws in the bill can be addressed and renegotiated. Mr. MILLER's substitute, which unfortunately was not made in order under this rule, addresses those flaws.

First of all, the law makes it far too easy for failed pension plans to be dumped into the Pension Benefit Guarantee Corporation. Mr. MILLER and Mr. RANGEL had ideas that would preclude that dumping from happening. They ought to be adopted.

Second, I think the law ought to make it clear that there cannot be bias or favoritism in favor of highly compensated people at the expense of the rank and file. Mr. RANGEL and Mr. MILLER's substitute accomplishes that.

The underlying bill does not, and some other issues, I believe, need to be worked out in the conference. I think, unfortunately, they should have been worked out on this House floor with a proper rule, but with those reservations I will vote to send the bill along to conference.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT. Mr. Speaker, I rise to urge my colleagues to vote 'yes' on this very important piece of legislation for several reasons. Paramount, it will help an industry that badly needs our help at a very critical time, and the only way we can help the airline industry is to get it into conference. There are a lot of things that may be right with this bill, there a lot of things that may be wrong with this bill, but the only answer and the logical and most responsible thing that we need to do is to vote 'yes' and send the bill to conference, allow the process to work.

I appreciate Mr. MILLER who has worked very diligently with me and understands my concerns. I represent an area that has probably more airline employees maybe than any other district. I represent Delta Airlines. We all know that Delta Airlines is in a bankruptcy fight, fighting for its very life; and the two most critical issues that they need help on is doing something to lower the high fuel cost, which we have problems with and how we can do it. There are all kinds of questions. But there is one thing we can do, and that is to help them with relief of their pension plans. So I urge my colleagues to vote 'yes' on this important legislation.

Mr. Speaker, this is a comprehensive pension reform bill that will protect workers' retirement incomes, give companies a longer window to make underfunded plans whole, and will help protect U.S. taxpayers from taking on the liability associated with future plan terminations.

Now I'm asking your help to help my people in Georgia.
One area that remains to be addressed in conference are major airlines’ pension plans. Delta Air Lines employs thousands of men and women in my district who rely now or plan to rely in whole or in part on retirement benefits provided by Delta. Without a change in current law that allows Delta and other air carriers that have defined benefit plan obligations, like Northwest, Continental and American, to make their pension payments over a longer period of time—20 years—it’s certainly a possibility that some or all of these plans will be terminated, benefits reduced and shifted to the taxpayers.

These carriers want to honor their obligations, but need to be equipped with the tools to have a fighting chance to do so. And getting this pension bill to conference is our only hope.

Although we are not addressing this specific need today, I strongly support continued pursuit in conference of an airline specific provision similar to that passed by the Senate, extending the payment period for these carriers to 20 years:

Let’s get this bill to conference. Let’s help Delta and all the airlines who need our help so much.

I want to thank Chairman Boehner for your hard work in making this reform bill a reality, and look forward to working with the conference.

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

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. SANDERS).

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

Mr. Speaker, I rise in strong opposition to H.R. 2830, the so-called Pension Protection Act. It should be pointed out that H.R. 2830 is opposed by AARP, the Congresisonal Budget Office and the Pension Benefit Guarantee Corporation, which both say that this bill will actually add to the Pension Benefit Guaranty Corporation’s deficit; that the bill could actually chase companies out of the defined benefit system and leave workers with fewer choices and plans for retirement than they have now.

This bill does not seem to do anything to discourage the pension plan terminations that threaten workers’ retirement security, and it does not stop companies from dumping plans in bankruptcy.

In committee, we offered an amendment that would allow the Pension Benefit Guaranty Corporation to intervene earlier, to work with companies in making sure they first exhausted all their options for making sure the plans survived before permitting them to terminate the plans and go into bankruptcy. A substitute for this bill would have allowed us to present that notion again.

Unfortunately, our colleagues on the Republican majority saw fit not to allow a substitute amendment so that we could not debate this proposal. And I suspect we do not see it here today because it would have carried. We would have gotten a majority of people in this Chamber to understand that everyone should be done that is possible to prevent a plan from going into bankruptcy before the plan is actually terminated.

Companies should first have to exhaust every single avenue of creative financing in order to save and restore pensions before they allow bankruptcy filings. The Pension Benefit Guaranty Corporation does have expertise it can lend to companies before it gets to that situation.

Mr. Speaker, I urge the vote against this bill and hope we get a better vehicle in the future.

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

Mr. Speaker, we do not tolerate discrimination in this country based on race, gender, religion, or disability; and we must not tolerate discrimination based on age with regard to pensions.

Unfortunately, that is exactly what H.R. 2830 does. According to the GAO, cash balance conversions without protections slash the pension benefits of an average 50-year-old by $238 a month.

Younger workers are also hurt. As the GAO reported, a typical 30-year-old would see his or her pension benefits slashed by $59 a month under a cash balance conversion. H.R. 2830 would legitimize these harmful pension cuts by legalizing cash balance conversions without requiring employers to protect older workers. That is wrong.

Mr. Speaker, let me read to you what the AARP and the Pension Rights Center have to say about this legislation. According to the AARP: “We cannot support legislation that would clarify the legal status of pension plans without providing protections for older, long-service workers involved in cash balance plan conversions.”

I urge a “no” vote.

Mr. CARDIN. Mr. Speaker, I am curious: Is the majority on the Ways and Means side going to be using their time or not? Does the gentleman know?

Mr. BOEHNER. I assume so.

Mr. CARDIN. Can I inquire as to the amount of time that remains on all sides?

The SPEAKER pro tempore (Mr. LATHAM). The gentleman from Maryland has 13 1/2 minutes remaining.

Mr. CARDEEN. The time for the gentleman from Maryland?

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

Mr. Speaker, I rise in strong opposition to H.R. 2830, the so-called Pension Protection Act, not because the system certainly does not need to be reformed, but because I think this particular vehicle, the way it was constructed, actually does damage to what used to be our three-legged stool of retirement security.

We used to rely on pensions; personal savings; and, of course, Social Security. We spent a great deal of this past year fighting any efforts to privatize Social Security and making sure that we had that leg in place. This bill does nothing to enhance personal savings, something this Congress ought to be taking up and making sure we do enhance.

With respect to pensions, we are in need of serious reform, but this moves us in the wrong direction. We have millions of Americans who have worked and tried to put their houses in order, tried to make sure when they retired they had a dignified and comfortable living, but this situation shows us over and over again that companies are now finding it better for themselves financially, to go into bankruptcy, capsize their pension responsibilities, and then sometimes coming out more profitable for the shareholders and for some of the CEOs but not for the rank-and-file workers. This is not fair, it is not right, and it is not sound policy for this country.

In too many instances, these companies are defaulting without first having made every possible effort to finance these pension plans and making them work. Workers on the other hand have had decades of working for companies, providing loyal service, the bargain for which was that in the end they would have a guaranteed pension. Many of them have worked too hard to have the course of their 20, 25, 30 years of service. CEOs, however, are still getting golden parachutes. They are getting the chance to steer their businesses into court to dump the pension plans and come out and still get taken care of handsomely; yet workers do not.

The Congressional Budget Office and the Pension Benefit Guaranty Corporation both say that this bill will actually add to the Pension Benefit Guaranty Corporation’s deficit; that the bill could actually chase companies out of the defined benefit system and leave workers with fewer choices and plans for retirement than they have now.

This bill does not seem to do anything to discourage the pension plan terminations that threaten workers’ retirement security, and it does not stop companies from dumping plans in bankruptcy.

In committee, we offered an amendment that would allow the Pension Benefit Guaranty Corporation to intervene earlier, to work with companies in making sure they first exhausted all their options for making sure the plans survived before permitting them to terminate the plans and go into bankruptcy. A substitute for this bill would have allowed us to present that notion again.

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Companies should first have to exhaust every single avenue of creative financing in order to save and restore pensions before they allow bankruptcy filings. The Pension Benefit Guaranty Corporation does have expertise it can lend to companies before it gets to that situation.

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

As I listen to my colleagues on the other side of the aisle, I have to tell you that I am confused. Some of them say the rules that we are proposing here are too tough and are going to drive employers out of the pension business, while we have some of my colleagues on the other side of the aisle saying the rules are not tight enough and we are going to create more deficits at the Pension Benefit Guaranty...
Corporation. Ladies and gentlemen, I think the bill is just right.

Yes, these are better rules that will require companies to better fund their plans. They certainly are better than current law. But I do not believe they go to the point of driving companies out of the defined benefit system.

My good friend from California believes we are going to drive up the deficit. Now, if the rules were not strong enough, I would not have had virtually every employer in America who has a defined benefit plan beating on my office door complaining about the rules we were proposing. I would not have had every labor organization talking to me about how do we get this right.

The fact is, if you look at the chart that we have here, plans must meet a 100 percent funding target. That is not the law today. If they are in the 80-90 percent range, it is good enough. But then as soon as the market turns down or the industry has a bump in the road, it is 100 percent and they are in deep trouble. So requiring plans to be 100 percent funded, I think, is a very good idea.

Having an interest rate that is commensurate with their liabilities is something that we have not done ever. We have had one interest rate used to calculate the plan’s liabilities. Under this modified yield curve proposal, they will have three different interest rates to use based on the longevity of their workforce, 0-20 years, 20-30, and those who are 50 and over. It will give us a more accurate reflection of the true cost of those plans.

Third, it requires funding shortfalls to be erased over 7 years. We want to give companies time to go from the current rules to these more responsible rules; and if we do not have a sufficient transition time, what is going to happen is that we are going to create real havoc in the marketplace.

Fourth, it restricts unlimited use of credit balances. We all know that the current rules about credit balances are, frankly, some of the most irresponsible public policy that I have seen. Beginning to restrict the use of those credit balances will, in effect, strengthen these plans.

Fifth, it curves benefit increases for underfunded plans. We all know there are plans that were underfunded, severely underfunded, and yet increasing benefits at the same time. That is not fair to workers who are being given promises that someone has no intention of keeping.

Last, it shores up the finances of the Pension Benefit Guaranty Corporation. All of these will bring more funding to companies. If companies bring more funding to the Pension Benefit Guaranty Corporation, and put our pension system for American workers on a stronger foundation.

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Why else do I think we are just right? I have a long list of business organizations that are supporting this bill and a long list of labor organizations that are supporting this bill. It is a balanced bill. I urge my colleagues to support it.

Mr. GEORGE MILLER of California, Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, United Airlines announced it was going to go into bankruptcy, the Democratic members of the Committee on Education and the Workforce planned an e-hearing so those people who were most affected by the bankruptcy of that company had an opportunity to talk to their representatives in Congress. We were not going to have a hearing on this problem, and these people could not come to Washington and testify. So we opened up the Internet to them, and we received thousands of replies from people telling us their life stories. The amazing thing about it was how many of these people were using their retirement to care for another member of their family. It could be a spouse with an illness, it could be a grandchild, and all of sudden, half of their pensions were evaporated into the bankruptcy of United Airlines.

Mr. Kenneth Schmidt was a long-time employee of United from Goodyear, Arizona. wrote, ‘‘Dear Congressman, I had worked at United for 38 years when I retired in February of 2003. My job as a mechanic was always a source of pride to me. I worked midnights for many years, and I was able to enjoy many of my family gatherings and holidays. This was what I chose to do in life, and I did it with no complaints. But now I am faced with large cuts in my retirement benefits. My retirement should be a time for taking it easy, traveling and enjoying my ‘golden years.’ If this cut happens, both my wife and I will be forced to reenter the work world, probably full time if our medical insurance is also affected. This is a sad time in this country for workers who are relying on a pension to ease their lives and make this time relaxing and enjoyable. The stress that is being created by the turn of events is not healthy for anyone. Please try and help all retirees and future retirees out of this most unfortunate set of troubles.’

What the problem is is that this legislation does nothing for the Kenneth Schmidts of the world, he and his family. It does nothing to keep companies from simply making a decision that they can throw the company into bankruptcy, get rid of the retirement and health care obligations to retirees and move along. This is not some unusual practice to bring shame upon a company. The steel companies did it. The airlines have done it. There is a question of whether the automobile industry will go this way.

It is really not completely about their pensions. It is about a decision of a business plan. It is about competition and a change in the marketplace. But the fact of the matter is that, at the end of the day, there is no showing. United did not have to show that for these pension plans they would be a solvent company. In fact, the people from the PBGC wrote and said that they thought the flight attendant plan could be salvaged, and in fact, maybe the others could. But the decision was made, and they went into bankruptcy without a hearing on that issue.

Companies should have to exhaust all of their attempts to try to save the retirement plans of these Americans, these people who have worked hard. Remember, the people in the United and those people in the car business, they traded health care benefits. They traded vacation days for this pension plan. That was the agreement and the guarantee. Now, unilaterally, the company gets up and walks away from it.

And to rub salt into their wounds, there were pilots required by the laws of this Nation to retire earlier. They take an additional hit on their pension because they are early retirees, not because they wanted to retire but because the law says they have to retire.

We have pension plans that could have been salvaged and people who are being punished because they are early retirees, not because they wanted to retire but because the law says they have to retire.

So we have pension plans that could have been salvaged and people who are being punished because they are early retirees, not because they wanted to retire but because the law says they have to retire.

We do that in our motion to recommit. We address the concerns of the flight attendants. We address the concerns of the early retirees, and we address the concerns of the airlines, but it does not do that in the majority bill because they want to go off and use those people as trading chips, the retirement nest eggs of these hardworking Americans, in the conference committee. I urge Members to vote against this legislation.

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

Mr. Speaker, H.R. 2830, the Pension Protection Act of 2005 strengthens retirement security for millions of Americans. Current pension funding laws and structures are outdated and threaten the financial stability of the pension system. In fact, the Pension Benefit Guaranty Corporation, PBGC, the government insurer of pension plans, estimates that single employer plans are underfunded by up to $450 billion.

Furthermore, an increasing number of companies are using the bankruptcy system to dump massively underfunded pension plans on the PBGC. Since tradi-
more appropriately funded while not being so strict that the companies providing pension plans are in danger of having to terminate them. To that end, H.R. 2830 provides transition relief to employers, giving them time and flexibility to get their pension funding in order.

In addition, the Ways and Means Committee incorporated into this package a number of tax incentives to increase retirement savings for Americans. Included in H.R. 2830 are provisions to make permanent the saver's credit and the increased contribution limits for IRAs and other 401(k) plans. The bill also increases savings opportunities for our men and women in combat and provides increased pension flexibility for public safety officers, including firefighters, policemen and emergency medical service employees.

Furthermore, this bill provides tax benefits to make health care and long-term care more affordable. H.R. 2830 makes permanent bipartisan pension improvements established in 2001. While pension reform is a difficult area to make adjustments, given the unique needs of each employer, this legislation is a fair and balanced package that will provide economic security for millions of Americans. It has broad support for both the employer and labor communities. I urge my colleagues to support this bill.

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

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent to yield 3 minutes to the gentleman from Maryland (Mr. CARDIN) for his control in this debate.

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

There was no objection.

Mr. CARDIN. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. LEVIN), the senior Democrat on the Subcommittee for Social Security and who understands retirement security.

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

Mr. LEVIN. Mr. Speaker, in a few words, what we need to do is to reform our pension system but not to undermine it.

There is a basic issue here, and I hope Members will pay attention to it. We have had in this country in the private sector a system of guaranteed monthly benefits under defined pension plans in the private sector for millions and millions of people. That has been meaningful.

What I think is going to happen if this bill becomes law and if it were to be combined in conference with provisions in the Senate is essentially to undermine defined benefit plans and move us towards what are called defined contribution plans, so more and more, everybody will rely on a 401(k) instead of the guaranteed benefit in the private sector. That shift was tried in Social Security by the majority. It failed for good reasons, and now I think there is another effort here regarding private pension plans to lead to the same result.

We asked the Bush administration when they testified before Ways and Means, tell us the impact on industry of your proposals. They could not tell us. If you look at the chief financial officers, 60 percent of them who deal with pension plans essentially say that this yield curve, this administration, and there is a modified version of it in this bill, would lead to benefit cuts and termination of defined benefit plans, and that would affect manufacturing as well as other industries.

I know there have been some efforts to moderate that. Various people have scrambled to try to reduce the potential undermining of defined benefit plans through this provision on credit balances, but I want everybody to know that there is nothing to work out in the main because this Republican bill would discourage companies from doing the responsible and sensible thing, advance funding their pension plans to free up resources in years when funds are available, and penalize those who would do it any way, who would advance funds.

Look, there are some transition rules, but they are not going to basically determine whether we are going to maintain, strengthen defined benefit plans. Now, it is said, look to the conference committee. All I can say is, look at the history of conference committees in this institution in recent years. What is likely to come out is a bill that would make this bill even worse, and even if it did not, what we face with this bill is this basic question: Do we want to strengthen defined benefit plans and payments, or are we going to move to everybody on their own? I think this House should stand up and say, let us stand up for a defined benefit system in this country.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Speaker, I rise again in support of this important legislation. I wanted to get down to this, well, to kind of deal with some specifics as to why it is not likely we move this bill on over into conference.

First of all, this is a comprehensive pension reform bill that will protect workers’ retirement incomes. It will give companies a longer window to make underfunded plans whole, and it will help protect U.S. taxpayers from taking on the liability associated with future plan terminations.

As I mentioned before, Delta Airlines employs thousands of men and women in my district, and other airlines, in many of your districts throughout this country, rely now or plan to rely in whole or in part on retirement benefits provided by Delta. Without a change in current law, that will allow Delta and other airline carriers that have defined benefit plans and obligations, like Northwest, Continental and American, to make their pension payments over a much longer period of time. Even then it is a certainty that some or all of these plans will be terminated. Benefits will be reduced, and liabilities will be shifted to the taxpayer.

We have an opportunity with this vehicle today to make sure that does not happen. We do not need to extend this liability over to the taxpayers. These employers and airline carriers want to honor their obligations, their pensions, but they need our help. They need to be equipped with the tools just to have a fighting chance to do so.

Mr. Speaker, let us give our airlines this fighting chance. I know that is not the main item on the agenda, but this is the only vehicle we have that we can understand this conference on. I urge Members to give us a chance so we can help a very important industry.

Mr. CARDIN. Mr. Speaker, first let me yield myself 30 seconds to point out that I wish we did have provisions in this bill to deal with the airline industry, because I think we should. The problem is that we do not, and we go to conference with a situation where those who have well-funded plans are now likely to be asked to pay because of the costs of the airline industry. And let me also point out from Mr. BORNEH’S comment about making the PBGC better funded, if we have a lot of terminated plans, it is not going to be better funded. And the gentleman brags about a permanent yield curve which is unpredictable to business. It would be better to have a corporate bond rate, and I am sorry that is not in this legislation.

Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. NEAL), a senior member of the Ways and Means Committee and one of the leading experts on retirement issues.

Mr. NEAL of Massachusetts. Mr. Speaker, as the consumer listens to this debate, one of the things I believe that they want to understand is that the advocates of this legislation, they are the ones that, just a year ago, were trying to privatize the Social Security system. They wanted to privatize the Social Security system. That should not be dismissed. So this bill is now shuttled to the floor, barely a word of consideration in the Ways and Means conference, and the Republicans on the Rules Committee would not grant us the opportunity to offer an alternative.

Pensions, like Social Security, should be sacred between the employer and the employee. There are few things that matter more than long-term security and guaranteeing pensions.

Now, let me give you the schedule of the Ways and Means Committee. We found days to discuss a free trade
agreement with Bahrain, days to hear testimony about Bahrain, a country with 700,000 people. And then we took months and months and months, as they attempted to privatize Social Security. We spent a disproportionate amount of time, after the American people voted, and the Wall Street Journal poll today, by the way, indicates quite clearly how they felt about their privatization plan of Social Security. Boy, is that clear. I will bet you on the other side everybody has read that poll by now. This was a terrible idea, and this is a terrible idea.

So where do we find ourselves? This legislation will do more harm than it will do good. The Committee on Investment of Employee Benefit Assets, a group that represents chief investment officers from the larger corporations in the country, recently conducted their own survey and concluded that if this were to pass, 60 percent of those employees would either freeze or terminate their pension plans. Everybody knows the most robust debate in America next year is going to take place over retirement security. Reject this legislation.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself 30 seconds just to say that we had several hearings on this pension bill in the Ways and Mean Committee, including the Select Revenue Subcommittee which I chair. Let me just say that the PBGC’s analysis shows that funding reform provisions in this end up being lower only in the short term; but, actually, starting in 2010, contributions to pension plans will increase. And that is because the funding reforms in the bill are phased in over 5 years.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), a member of the Ways and Means Committee.

Mr. ENGLISH of Pennsylvania. Mr. Speaker, I yield myself the balance of my time to the gentleman from North Dakota.

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Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY), one of the leaders in the Ways and Means Committee on pension issues, the former insurance commissioner from North Dakota.

Mr. POMEROY. Mr. Speaker, there are two major problems with this bill. The first is that it costs $70 billion and the cost is not offset anywhere. It drives the deficit deeper.

Last week, this Chamber voted to deal with the AMT 1-year fix, $31 billion. The majority voted to pass a budget reconciliation that added another $56 billion in deficit. This adds an additional $70 billion in deficit. $177 billion in deeper deficits.

You know, it is Christmas time. People are thinking what to give their children. Well, the majority seems intent on giving them quite a present in deficit. $177 billion in deeper deficits.

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The second aspect of this bill that I want to point out is that it is deep flawed pension policy, and it will cause the cancellation, freezing of thousands of plans affecting millions of workers.

Do not take my word for it. This is the estimate of the chief investment officers in an organization known as CIVA. They estimate that if this bill passes 60 percent of the plans will freeze. Frozen plans mean frozen benefits. And we do not know, the rest may freeze as well. They conclude: “These proposals would have long-term consequences for current and future workers with the potential to damage the retirement security of millions of Americans.” Potential to damage the retirement security of millions of Americans.

We have seen this story before. This is a group that worked for months to privatize Social Security, take away that monthly dependable income our seniors enjoy. Well, they failed on that one. Now they are after pensions, and without question this will dismantle pension in the very same way they tried to dismantle Social Security.

Now, several groups are for this bill. Why? Well, airlines are so desperate for a fix they are arguing for this bill even though it has no airline provisions. I was stunned when the chairman announced in a colloquy his lines of communication are open. Well, Mr. Chairman, people have been calling. Airlines have been calling. Hello. Advocates for airline workers have been calling. Hello. Delta Airlines, calling. Hello. No answer. No answer from the majority. And so someone that supports an airline urged to vote for this bill when the provision is utterly left out, it makes no sense. You do not help airlines with this proposal. The Democrats had an alternative that had airline relief in it. It was not even allowed for consideration.

I believe that this bill is deeply flawed pension policy. It will hurt workers. Vote "no.”

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. RAMstad), a distinguished member of the Ways and Means Committee.

Mr. RAMstad. Mr. Speaker, I strongly support this important legislation to address pending funding issues for America’s workers, and I applaud the work of Chairman Thomas and Chairman Boehner on this bill.

As my friend from North Dakota, on the other side of the aisle, just pointed out, relief for the pension plans of America’s struggling airlines is not in their current House bill. It is important to my district, but I have been assured, Mr. Speaker, that as this bill moves to conference with the Senate version, the special challenges facing airlines will be addressed. It is important to the people of my district.

Northwest Airlines is the largest employer in the Third Congressional District of Minnesota, and thousands of Northwest employees are counting on Congress to rescue their pension plans. Northwest wants to avoid pension plan fail and be turned over to the Pension Benefit Guarantee Corporation.

Northwest Airlines is struggling to emerge from bankruptcy and is trying to do the right thing for its employees by allowing them to own a part of their pension plans. As this bill moves through the process, I agree, we must provide relief to this fragile industry. But we must pass this bill today by passing this bill so employees can get the benefits they were promised and the PBGC and taxpayers will not be on the hook. So let
us pass this bill, get it to conference, address the airlines’ pension problems in conference, and get this bill to the President before we go home for the holidays.

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

Mr. CAMP of Michigan. Mr. Speaker. I yield 2 minutes to the gentleman from Indiana (Mr. CHOCOLA), a distinguished member of the Ways and Means Committee.

Mr. CHOCOLA. Mr. Speaker, it is because of today’s outdated pension rules, workers, retirees and taxpayers all stand to lose unless we act now to reform our pension system. Under current law, employers have been allowed to underestimate their future pension liabilities and to make promises they simply cannot keep. The recent example of United Airlines underscores the need for reform. United Pilots Plan was severely underfunded, yet the company was not required to make cash contributions to that plan in 8 years prior to its termination.

The legislation before us today strikes a careful balance between preserving the defined benefit pension system for workers and ensuring that employers who abandoned their pension plans or mismanaged their plans provide workers with meaningful disclosure about the status of their pensions, and it protects taxpayers from a possible multibillion dollar bail-out of the PBGC, which insures the pensions of some 44 million workers.

But H.R. 2830 contains other important provisions aimed at improving the economic security of retired Americans. For example, it provides retired firefighters and police officers, who often retire early without Medicare coverage, with a tax break on pension withdrawals to pay for health insurance premiums. This provision enjoys strong bipartisan support and offers a small measure to protect against exorbitant health care costs that follow a career spent responding to emergencies.

All together, Mr. Speaker, this bill represents a balanced approach to protecting the interest of workers, retirees and taxpayers, and I urge my colleagues to support its passage.

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

Mrs. MILLER of Michigan. Mr. Speaker, I rise first to the floor, I was very concerned, certainly, about how it dealt with some of our manufacturing companies and our workers as well. So many people in my district have worked a lifetime to secure a good pension to help them in their retirement years. They perform jobs that are difficult on them, both physically and mentally; and they have earned their pension.

In Michigan we have so many workers in the airline industry, because of course, Detroit is the hub for Northwest Airlines. But we obviously also have a huge number of auto workers because of the Big Three and the numerous suppliers to the auto industry that reside there.

Northwest Airlines supports this legislation, as does Continental Airlines, American Airlines, Delta Airlines. So you might think, well, it must be bad for the airline workers then, right? But the bill is supported by the Airline Pilots Association and the Association of Flight Attendants. So both management and labor do support this bill.

This bill is also supported by General Motors and even the Delphi Corporation. So you might think it might be bad for auto workers, right? Well, it is actually also supported by the United Auto Workers Union. In fact, it is also supported by the Affiliated Unions of the Building and Construction Trades Department of the AFL-CIO, the Bricklayers and Allied Craft Workers, the Transport Workers Union, the United Brotherhood of Carpenters and Joiners, and the United Food and Commercial Workers Union.

I think we have crafted an excellent piece of legislation. It does what needs to be done: provide pensions. Let us pass this legislation. Let us get it into conference with the Senate, and let us get on with the job of ensuring that workers are secure in the knowledge that the pension that they have worked so hard to get will be there when they retire.

Mr. CARDIN. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DOGGETT), a distinguished member of the Ways and Means Committee.

Mr. DOGGETT. Mr. Speaker, in Texas, gray skies could mean a twister, a hurricane, or just a lot of rain. To avoid disaster, we want a reliable weather forecast. The same when we go to the doctor, a diagnosis before taking necessary action. And the same should also be true of our economic health.

Families that work hard to earn a pension depend on it for retirement security. But too many suddenly find their pension funds are drained, denying them of the dignified and comfortable retirement for which they have worked a lifetime.

In addition to the many other problems identified here today by my Democratic Ways and Means colleagues, this bill lacks a pension disclosure requirement that would empower workers to understand just how strong or weak their pension plans really are. Having to wait until a retirement fund’s bankruptcy is announced in the newspaper is a little too late for employees to take any remedial action to be able to protect themselves.

Both the Government Accountability Office and the Pension Benefit Guaranty Corporation recommend that employees be provided information far beyond the provisions of this bill. I think it is important that we not leave the employees in the dark with corporate employers blocking the light switch.

I yield the balance of my time.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding me this time. I would like to offer my support also for the comprehensive pension reform legislation that we are now considering. I would also like to congratulate and thank Chairman BÖHNER and Chairman THOMAS for their hard work in getting us to a point where we can make meaningful and necessary reforms to our pension system.

It has become very clear to us that the laws governing pension plans are antiquated. This is evident from recent high-profile bankruptcies, pension plan terminations and the high-profile bankruptcy of Northwest Airlines supports this legislation. But the high-profile bankruptcies, pension plan terminations and the high-profile bankruptcy of Northwest Airlines supports this legislation. And the same should also be true of our economic health.

As we have all heard here this afternoon, H.R. 2830 will strengthen pension plan funding rules, provide workers with meaningful disclosure about the health of their pension plans and protect taxpayers from a possible multibillion dollar bail-out of the PBGC. I would like to highlight a couple of provisions within the bill that I believe are also vital to the health of the system.

First, many workers and retirees in recent years mistakenly believed that their pension plans were well funded only to receive a shock when the plan was terminated. Without basic information, workers and retirees are left without the most basic tool they need to hold their employers accountable: complete and accurate information about the true funded status of their pension plans. The Pension Protection Act, which mandates that employers block the light switch.

Second, when pension plans are underfunded and worker retirement security is in jeopardy, excessive executive compensation packages can add insult to injury by heaping lavish benefits on executives while workers and retirees wonder if they will have any retirement benefit at all. The Pension Protection Act restricts the funding of...
such executive compensation arrangements if an employer has a severely underfunded plan. Moreover, it requires plans that become subject to these limitations to notify affected workers and retirees.

Again, I thank the chairmen for their leadership, and I urge my colleagues to support the Pension Protection Act.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. Ryan), a distinguished member of the Ways and Means Committee.

Mr. Ryan of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I cannot think of anything more scary, anything worse than working one’s lifetime, working hard every day and then seeing their pension go before them, seeing their pension get terminated. That is the worst possible situation that could happen to a worker and to a family.

We have a system that needs fixing, Mr. Speaker. We have a pension system that has some loopholes where companies can put more money in their pension plan when they needed to, to make them funded, and then we have a system that disincentivizes companies from putting more money in their pension plan to fund the workers and employees when they have one and they have the will to do so. That is wrong, and that needs to be fixed.

Yet, on the other hand, Mr. Speaker, as this legislation was being drafted, we want to make sure it goes to a time where companies fully fund their workers’ pensions. Getting to that transition was difficult, and I want to thank the chairman of the Ways and Means Committee, Mr. Thomas; the chairman of the Education and the Workforce Committee, Ms. Jones; and the chairman of the Select Revenue Measures Subcommittee of Ways and Means, Mr. Kennedy.

I opposed this bill in committee. I was the only Republican to do so. But, Mr. Speaker, we have fixed this legislation. This legislation is good for management. This legislation is good for labor.

This legislation is good for management. This legislation is good for labor. This legislation is good for management. This legislation is good for labor. But, most importantly, this legislation is good for workers. This legislation is good for workers. This legislation is good for workers.

Mr. CARDIN of Maryland. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield to the gentleman from Minnesota (Mr. Kennedy) for the purpose of a colloquy.

Mr. Kennedy of Minnesota. Mr. Speaker, I believe that section 122 of this bill is an important public policy statement that says corporate executives, the people who are responsible for funding their pension plans, should not be feathering their own nests with overly generous retirement packages. Currently, the bill penalizes employers who fund executive compensation if the sponsor’s employee-defined plans are less than 60 percent funded. My concern is that by setting the thresholds, we are not encouraging them enough from being irresponsible with the retirement security of their employees while they take care of their own retirement packages.

I ask the chairman to work with me in conference to increase the threshold to at least 80 percent so that we encourage executives to take their pension funding obligations more seriously, not leave their defined benefit plan beneficiaries and, indeed, the PBGC and taxpayers on the hook.

Mr. CAMP of Michigan. Mr. Speaker, reclaiming my time, I would just say to the gentleman, as chairman of the Select Revenue Measures Subcommittee of Ways and Means, I look forward to working with him on this and other issues as this legislation moves through the process and to conference.

Mr. Kennedy of Minnesota. Mr. Speaker, I thank the gentleman for his response.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. Hart), a distinguished member of the Ways and Means Committee.

Ms. Hart. Mr. Speaker, I thank the chairman of the Education and the Workforce Committee. Without their urging, this bill would not be on the floor today, and this bill is so extremely important, especially to constituents in my district.

Over the last year, I have met with employees, union members, covered by both multi-employer and single-employer plans, also with the employers to discuss their concerns regarding pensions. Pension protection continues to be a top issue. Many of my constituents have faced challenges to their pensions with companies like United first filing for bankruptcy or others turning their plans over to the Pension Benefit Guaranty Corporation.

This bill would establish sensible funding rules, requiring employers to fund 100 percent of their pension liabilities. This bill, fair consideration is given to those plans which need to catch up, but funding shortfalls must be made up within 7 years. Also, employees are urged to increase their pension contributions during profitable years, which they cannot currently do freely under the present rules.

In addition, the bill encourages greater transparency so that employees know the status and financial health of their own company’s pension plan, ultimately improving their retirement financing. They have a right to know. These requirements will create more stability and certainty in these pension plans.

This bill also prohibits employers from funding golden parachute executive compensation plans. Most pension plans of the rank and file are underfunded. U.S. Airways executives walked away with $35 million in executive compensation after running the company nearly into the ground and dragging concessions out of their employees, including reductions in pension benefits for pilots and leaving other employees in the dark about the funding of their pension plans. This is unfair to the hardworking employees of these companies, and this bill would prevent such a travesty in the future.

Finally, this bill encourages additional retirement savings by extending retirement contributions to workers during their employment, including reductions in pension benefits for pilots and leaving other employees in the dark about the funding of their pension plans. This is unfair to the hardworking employees of these companies, and this bill would prevent such a travesty in the future.
passed in 2001 to increase annual contributions to IRAs and qualified pension plans and “catch-up” contributions for individuals over 50.

I hope my colleagues will support this legislation because it finally gives employees what they need: stability in their retirement system. Mr. EMANUEL. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL), whose provisions are in minutes to the gentleman from Illinois.

Mr. EMANUEL. Mr. Speaker, this legislation is a missed opportunity. As my colleague from Maryland just noted, I have sponsored legislation on the automatic enrollment and 401(k) plans, direct deposit of tax savings into a savings plan, and the savers credit for people with moderate income, to start saving. Why? Because basically almost 80 percent of small business employees have no retirement plan outside of Social Security. For approximately 38 percent of the households in America, the only savings plan they have is Social Security.

By doing what is right, by helping people start up their personal savings through 401(k)s and other types of personal savings, we would actually encourage people to save for their retirement. So this legislation on the defined contribution level takes the right step. And it is so unfortunate because we can get an overwhelming vote for those provisions to help Americans save outside of Social Security. And I am glad we took this year to stop the privatization of Social Security. But in doing that, they have added the provisions on the defined benefit plans. On a stand-alone, none of that would pass. So what they are trying to do is get the goods through Customs using the defined contributions to get through what I think are some very dangerous provisions as it relates to the defined benefit plans that are good provisions that relate to the defined contributions, it makes the defined benefit plans much worse.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, pension reform is more than just an accounting issue; it is about protecting the trust between employers and their employees. It is critical for Congress to address this issue and step in and fix rules that no longer work. Many are complying with pension laws. However, the current system is too weak, and many companies have plans that are underfunded. It is time for Congress to step in and reform single-employer pension plans. Multi-employer plans, improve disclosure and enhance retirement savings. The bill before us achieves these goals.

The pension bill requires companies to accurately measure how much to contribute to their plans and how much they owe. This bill also protects shutdown benefits. Those are benefits that are paid to workers who are being laid off because of a plant closing. These benefits are critical to help older workers affected by corporate downsizing. It is imperative that well-funded plans be able to continue to provide their workers with shutdown double benefits, and I am glad this Pension Protection Act preserves this important pension security tool.

The strength of multi-employer pension plans is critical to the retirement security of many Americans. Approximately 1,600 multi-employer plans cover about 9.8 million workers in the United States. Multi-employer plans, like single-employer plans, cannot simply be turned over to the PBGC. Therefore, it is even more important to those involved that these plans are properly funded.

This bill strengthens the solvency of multi-employer defined pension benefit plans by providing trustees with the tools to fix the mess in this situation. The bill requires trustees to adopt rehabilitation plans for critically funded pensions and protects employers from defaulting on their promises.

One important provision of this bill, and perhaps one of the least mentioned, is regarding disclosure requirements. The bill would give retirees and employees better information on the financial condition of their plan. Now workers will be sent information from their plan’s ratio of assets to liabilities, the plan’s funding and asset allocation policies and other critical information.

While protecting pensions is a focus of this legislation, the bill does much more than just protect, it includes new opportunities for people to prepare for their retirement and bolster their savings. The bill provides individuals with new insurance products that help Americans better afford long-term health care costs. I applaud the work of Chairman THOMAS and Chairman BOEHNER and urge support of this bill.
have argued that the rules are not tough enough, and we are keeping the door open to irresponsible practices. I truly do believe that we have a bill that is balanced, that will not push employers who have these plans out of the system, and will protect American workers who have been promised these benefits.

If we do not act, we know exactly what is going to happen: Millions and millions more Americans are going to lose retirement opportunity for a defined benefit pension plan, and millions of Americans who already have one are going to be at risk that they will not have their plan. So Congress must act.

Not only did we deal with single-employer pension plans, but we have not talked much about multi-employer pension plans that you find traditionally in the trucking industry, the food industry and others. And while they have not been talked about much today in this debate and the administration did not weigh in on this either, there are enormous changes to the multi-employer pension system in this plan that will help strengthen that system.

Those plans, by and large, are healthier than single-employer plans, and what we have done is to put on both sides in the multi-employer sector come together to put rules in place so that their plans can never get into a very weakly funded position. I am glad they are in the bill.

Let me point out that there are large numbers of groups supporting this bill. Every major labor organization, with the exception of several, is supporting this bill. Many in the management sector in every large business organization is supporting this bill. Why would all of the labor organizations and the business organizations all be on board in support of this bill? Because they think it is balanced. They think it is the right thing to do, and they think Congress needs to act.

Is everything perfect in the bill? No.

As the gentleman pointed out, we have got airline relief that we will probably be talking about again soon. Our commitment is to deal with this in conference.

My colleague from Ohio talked about the need to go further on cash balance language. I certainly agree with her. As the gentleman pointed out, we have not been talked about much today in this debate and the administration did not weigh in on this either, there are enormous changes to the multi-employer pension system in this plan that will help strengthen that system.

The American worker’s pension should not be a pawn for businesses to navigate bankruptcy. I am especially concerned about the adverse effect this bill has on women.

As a Member on the Aviation subcommittee and a frequent flyer, I have worked for years with airlines and flight attendants. Many, many airline employees are women. Many of those women are single mothers. Without a guaranteed source of retirement income, it is almost impossible for these women to stay in the employ of the airlines—and worse yet, many of these women have already put in years of hard work and have already lost upwards of 75 percent of their pensions.

Mr. Speaker, my office has received a tow-ering number of calls from women whose pensions have been lost.

How do we as Members of Congress tell these people that after all these years of paying into a pension—working toward a retirement—they have to make other plans for their golden years.

We have an opportunity to do some real good. We have an opportunity to strengthen the commitment between the employers and workers, however this bill further drives a wedge between the two.

Vote no against this bill today and let us pledge to come back during the second session of the 109th Congress and do this right.

We owe it to the American people to take their financial future as seriously as they do. Vote no on the Pension Protection Act of 2005.

Mr. HOLT. Mr. Speaker, I rise to express my opposition to the pension reform legislation that we are considering today. I oppose this legislation because it will further erode an employer’s willingness to provide defined benefit plans and will close the loopholes that allow companies to dump their pension obligations on to taxpayers.

Throughout the 1990’s, in American workplaces a dramatic shift from traditional defined-benefit plans to defined-contribution plans has already taken place. Employees are now faced with managing their retirement security and are forced to make critical financial decisions on their own. The result has been that America’s workers are worse off.

Americans deserve to know that their pension is secure and that they will receive the benefits that they have been promised.

American workers deserve to know that their pension is secure and that they will receive the benefits that they have been promised. In fact, this bill places the future of today’s American worker in jeopardy.

Even worse, this bill places those who have put in the years and worked hard at the mercy of bad management decisions.
will preserve the defined benefit pension system.

Mr. MARKEY. Mr. Speaker, I rise in opposition to the so-called pension “reform” bill today on the House Floor. The bill before us today fails to address fundamental problems that have robbed millions of hard-working Americans of the retirement benefits they have earned. This Republican bill will not prevent companies from dumping their pension plans onto the Pension Benefit Guaranty Corporation (PBGC), which already is burdened with a $23 billion deficit and may have to be bailed out by taxpayers. This bill does nothing to protect older workers when their pension plan is converted to a “cash-balance” plan that could short-change them of the benefits they accrued. The bill also contains provisions that increase the costs and regulations for companies to maintain pension plans to the point that many companies will freeze or abandon their plans, accelerating the growing pension crisis.

Democrats were not permitted to offer amendments to improve this bill. While I cannot support this flawed, misguided Republican bill, I support the Democratic Substitute offered by Representative MILLER, Representative RANGEL and Representative CARDIN. The Democratic Substitute would stabilize and protect pension plans by extending for 2 years the corporate-bond-rate used to determine PBGC liabilities, encourage employers to maintain defined benefit plans without cuts in workers’ pension benefits, and protect older workers during cash-balance conversions.

As the pensions of workers remain at risk, I am concerned about conflicts-of-interest, hidden financial arrangements and unlawful activities that may be causing or contributing to the poor financial health of pension plans at companies across the country. In May 2005, the Securities and Exchange Commission (SEC) released a report, “Examinations of Select Pension Consultants,” that revealed significant conflict-of-interest and non-disclosure issues within the pension plan consultant industry. Specifically, SEC found, among other conclusions, that:

Pension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant’s (or affiliate’s) relationship with the vendor, receipt of fees from these firms, rather than because the money manager is best-suited to the client’s needs. Such a conflict can compromise the fiduciary duty that investment advisers owe their clients.

The findings included in the Commission’s report are particularly disturbing for pension plan beneficiaries, whose benefit payments are dependent upon their plan management’s diligence in performing its fiduciary duty, and for the Federal Government, which is faced with an enormous deficit at the Pension Benefit Guaranty Corporation (PBGC) as a result of a series of massive corporate bankruptcies that have resulted in PBGC assumption of severely underfunded pension plans terminated when the company declared bankruptcy.

Representative MILLER and I have requested that the Government Accountability Office (GAO) investigate whether the Federal Government is aggressively regulating and enforcing statutes intended to protect pension plans and their beneficiaries from conflicts-of-interest and similar undisclosed relationships that can impair pension fund returns. We have urged GAO to examine whether any of the 3,500 terminated pension plans that are now the responsibility of PBGC may have been adversely affected—prior to PBGC assumptions—by the plan’s liabilities—by the types of conflicts and hidden financial arrangements uncovered by the SEC.

I am hopeful that the pension legislation considered today by the House will be greatly improved during the conference with the Senate, so that we can have a vote on pension reform legislation that actually addresses the real problems that exist in the current system. Additionally, I look forward to GAO’s work in the important fur consultants. The ongoing crisis in the pension fund marketplace requires a thorough, independent review to identify problems with government regulation and enforcement and recommend improvements. American workers have relied on the pension promises of their employers. It is unconscionable to abandon these workers. I urge a “no” vote on this Republican pension bill, and a “yes” vote on the Democratic Substitute.

Mr. GUTENNECHT. Mr. Speaker, I rise to speak on behalf of 7,000 current and former IBM employees who live in my district. While most of this bill is necessary and the legislation is appropriate, the weakness of the bill is that it fails to clarify the rules concerning the conversion of defined benefit pension plans into cash balances.

I understand the bill will not affect the IBM employees and their court case. It could, however, affect millions of Americans that are currently vested in defined benefit pension plans. Even though they may be working for a very reputable company, they could, under the terms of this bill, show up for work one day and learn that their promised benefits have been dramatically reduced with the sweep of a pen.

Under cash balance plans, older, long-serving employees do not have the same opportunities to build up retirement benefits that younger workers do. The bill before us today would allow conversions to take place but gives no protections to workers during these transitions. I offered an amendment last night at the Rules Committee related to this provision to vested workers. Unfortunately, the Committee did not rule my amendment in order.

The Senate version of the bill contains more protections for workers. For those and other reasons AARP supports the Senate passed bill and opposes the House bill. I would hope protections like the amendment I tried to offer will be incorporated in the final version.

While I am voting today to move the bill forward into conference with the Senate in the hopes more worker protections can be added, I reserve the right to file a report that fails to correct this glaring omission.

Mr. LARSON of Connecticut. Mr. Speaker, I rise in opposition to the so-called Pension Protection Act and in support of the Democratic motion to recommit.

There is no question that our Nation is facing a pension crisis. Over 34 million American workers currently rely on the benefits they receive from a defined benefit pension plan to make ends meet. Yet, with the growing number of corporations cutting pension benefits or declaring bankruptcy, people are increasingly concerned about their retirement security.

More and more, American workers are facing the prospect of seeing their employers use our Nation’s bankruptcy laws to back out of their pension promises and turning their obligations over to the Pension Benefit Guaranty Corporation (PBGC)—which only partially funds promised benefits.

Unfortunately, the bill before us today is a missed opportunity to provide American workers with real pension protection.

H.R. 2830 makes significant changes to the rules for defined benefit pension plans, increases the premiums that companies pay into the PBGC, and does nothing to prevent companies from dumping their pension obligations on American taxpayers. According to the Chief Investment Officers of over sixty percent of our Nation’s largest pension plans, these likely will lead to cuts or terminations of existing plans. According to the Congressional Budget Office, this legislation would add over $70 billion to the federal deficit and fails to improve the PBGC’s financial condition by increasing the agency’s financial shortfall by $2.5 billion.

Rather than allowing an open debate on this important issue, the majority leadership has placed the pension security of our Nation’s workers in with a single voice. Mr. Speaker, today’s legislation is the latest in a series of attempts to privatize profits and socialize losses. It is my sincere hope that as we move into conference, we can produce legislation that will provide American workers with pension funding stability and gives the airlines the tools they need to shore up their employee pension plans. This alternative would provide American workers with real pension protection, rather than continued retrenchment security.

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parachute when an employer carries a qualified pension plan that is 60 percent underfunded or more. After all, the average working man in rural Georgia deserves nothing less than a corporate executive in New York.

And while H.R. 2830 includes important reforms to ensure employers more accurately fund their pension obligations, it also holds union leaders to a higher standard as well. Over the years, union leaders have exerted tremendous pressure on employers in every commercial sector by negotiating benefit increases to defined benefit plans that are already under-funded. This is no less outrageous, and H.R. 2830 takes important steps to prevent union leaders and employers from negotiating unrealistic benefit increases that will only hasten plan failure and an eventual taxpayer bailout.

In addition, the compromise measure includes a series of requirements to address “Critical Multiemployer Plans” funded between 65 percent and 70 percent. These plans face significant and immediate funding problems. H.R. 2830 strengthens the funding requirements for critical plans, it also requires trustees to develop a rehabilitation proposal to show a 20 percent improvement over 15 years.

Mr. Speaker, the number of employer-sponsored defined benefit plans are declining by the day, down from an all-time high of 170,000 in 1985 to 30,000 today. This is unacceptable. Congress should not sit idly by while the defined benefit system continues to die on the vine, and for that reason I urge all of my colleagues to avert the pending retirement security crisis by passing the Pension Protection Act today.

Mr. UDALL of Colorado. Mr. Speaker, I must reluctantly oppose this legislation.

I support changing the current rules related to pensions. I had hoped that this bill would be considered under procedures that would allow it to be improved.

However, the Republican leadership has made it impossible for even a single amendment to be considered—and the bill’s flaws so outweigh its good features that it should not be passed in its current form.

Among the most troubling aspects of the bill is its potential effect on defined-benefit pension plans.

Some 34 million Americans are now covered by defined-benefit plans, but their retirement security is threatened by the failure of some companies to adequately fund the plans, by corporate bankruptcies such as that of United Airlines, and consideration by even profitable companies of freezing benefits and ending their pension plans.

And many of the people who manage large pension plans tell us the result of enacting this bill’s provisions that would make significant changes to the rules for these plans and increase the premiums companies pay the Pension Benefit Guaranty Corporation, PBGC, could be winners, worse, termination of even well-funded plans.

At the same time, the bill’s requirements for increased payments to PBGC threatens the financial health of many manufacturing companies and fail even to adequately improve PBGC’s financial condition—its own analysis found that the bill would increase the agency’s financial shortfall by $2.5 billion.

And both the Congressional Budget Office and PBGC have concluded that the bill would increase claims on the Federal Government by billions of dollars, which would increase the likelihood of a massive taxpayer bailout as well as the loss of billions of dollars in employee and retiree benefits.

I am not prepared to support legislation that would increase the chances of such outcomes, especially when its tax provisions would substantially increase future budget deficits and would primarily benefit taxpayers in the highest income groups.

According to the Joint Committee on Taxation, the revenue effects of the tax provisions primarily benefiting higher-income households would grow from $3.6 billion in 2012, the first full year affected, to $5.6 billion a year by 2015. By trebling the saver’s credit, which is most important to lower-income households, would fall from $1.4 billion in 2008, the first full year affected by that provision, to $943 million by 2015.

That means that in 2012, the saver’s credit would account for one-fourth of the total benefits of all these provisions, by 2015 it would account for only 14 percent of the total benefits.

And after that the saver’s credit would dwindle further, eventually fading away, while the upper-income pension tax changes would become still more robust.

As the Center on Budget and Policy Priorities says, “To allow the severe erosion over time of the principal tax incentive for modest-income families to save for retirement does not make sense.”

In summary, Mr. Speaker, while I recognize that there are good aspects to this bill, and while I think Congress does need to act on this subject, I think that on balance the bill as it stands should be rejected so that a better-balanced measure can be brought forward.

Mr. BLUMENAUER. Mr. Speaker, the income security of Americans has been under constant attack by the administration and Congress this year, especially those families who have not had the good fortune to earn a living that places them in our highest income brackets.

The year started with efforts to dismantle Social Security, an efficient program that is the primary source of income for a majority of retirees. Next, a slanted bankruptcy bill that puts no burden of responsibility on unscrupulous lenders and credit card companies and all of it on the families that face hardships from large medical bills, family breakups, and job losses. Congress has been wringing its hands that a couple of these programs for America’s most vulnerable should be cut so tax cuts can be extended years from now.

The latest attack on the security of American families is this pension bill. It is clear that the Pension Benefit Guaranty Corporation must be strengthened and that rules must be put in place to ensure companies adequately fund the promises they make to employees.

Instead, the Congressional Budget Office has reported that this bill would actually increase the PBGC’s deficit by $9 billion over the next 10 years. The bill also legalizes cash balance plans without protections for long serving employees. It has been reported that without older worker protections over 90 percent of older workers would lose expected pension benefits if a defined benefit plan were converted to a cash balance plan. Additionally, this bill does nothing to help the struggling airline industry that has already seen United Airlines employees and retirees lose over $3 billion in earned pension benefits.

Reforming the pension system and providing security to all families should be a priority of Congress and can be achieved with fiscal responsibility and fair policy. This bill falls short on both accounts.

Mr. STARK. Mr. Speaker, I rise today in strong opposition to H.R. 2830, which would be better titled the Republican Pension Destruction Act. American workers deserve much better than a bill that will reduce employee pensions and provide incentives for employers to break pension promises to employees.

Recent bankruptcies in the airline industry shed a bright light on exactly what big corporations are up to. A few months ago, United Airlines dumped its flight attendant pension program onto the Pension Benefit Guaranty Corporation (PBGC)—a government organization to serve as a safety net for corporations who can no longer afford to meet their pension obligations. The PBGC, however, does not fund pensions at 100 percent, instead making a reduced payment to retired employees.

As a result, tens of thousands of United employees, past and present, will receive smaller pension payments than they deserve. Unbelievably, in the same bankruptcy proceedings United Airlines’ CEO Glen Tilton was allowed to keep his $4.5 million pension. This is unacceptable, and the bill offered today does nothing to prevent CEOs from opening these golden parachutes while their employees are forced to take a reduction in their benefits.

I’ve heard from hundreds of constituents on this issue. I can’t say it any better than this former United employee from Hayward, CA who wrote the following during an e-mailing I have been co-hosting regarding the United Airlines crisis.

“I worked for United Airlines 35 years as a mechanic. Two years ago I retired with the promise that my pension was safe. If I lose a big chunk of my pension I will have to sell my house and take my almost blind wife to another state where it’s cheaper to live. Away from our doctors and family. I am not able to
work anymore—physically unable—can you help us?

We could help United employees and the retirement security of millions of Americans by passing real pension reform, but Republicans would rather destroy pensions instead of protecting them. When Democrats offered legislation to fix the pension solvency issue by protecting retirees and forcing CEOs to be held accountable, the Republican Majority wouldn’t bring it up for a vote because it could have passed. Sadly, this is just one more example of Republicans siding with corporate campaign donors over American workers.

The list of problems associated with this bill is seemingly endless. The PBGC itself says its own ability to cover pensions will decrease by $2.5 billion under this bill. The Republican bill does nothing to protect airline employees. And in a final slap in the face to hardworking taxpayers, the bill adds $71 billion to the deficit over the next 10 years, because Republicans refuse to be fiscally responsible and pay for their reforms.

This Republican pension bill undermines retirement security and puts the once guaranteed pension benefits of millions of hard working Americans in jeopardy. I urge all my colleagues to vote “no” on this bill.

Ms. KILPATRICK of Michigan. Mr. Speaker, I rise today in strong support of H.R. 2830, The Pension Protection Act of 2005, H.R. 2830. I commend the authors of this bill who worked with elements of the union movement to craft legislation designed to address some of the issues affecting the employer-provided pension system. Key stakeholders in Michigan’s 13th Congressional District support the bill that we will consider today. Organizations like General Motors, Ford Motor Company, the United Auto Workers Union, building trade unions, Northwest Airlines, airline pilots, flight attendants, and more have contacted my office to express their support for the bill.

The leadership of my party has pointed out that the bill has several major shortcomings. My leadership argues that H.R. 2830 does very little over the long-term to strengthen traditional, defined benefit plans. Had the majority passed the Senate bill, I would have supported it to amend the bill, I am sure that our suggestions would go a long way to improving the legislative product before us. We, however, are being denied that opportunity, and I must decide what best represents the interests of the private sector companies, which are the majority in Michigan—my state and on my side of this Congress. Therefore, I will move the process forward to address the pension concerns of the airline industry and airline employees and the concerns of our steelworkers, who take exception with shutdown provisions of the bill to address the pension needs of companies in total “shutdown” status.

Mr. DAVIS of Kentucky. Mr. Speaker, I rise today in strong support of H.R. 2830, The Pension Protection Act of 2005. This bill addresses a serious issue facing our Nation. The ultimate enactment of pension reform must be a priority to this House and the Congress. I congratulate and thank Chairman BOEHNER and Chairman THOMAS for crafting a comprehensive pension reform bill with so much support from the business and the labor communities.

This legislation represents a successful compromise that will help protect workers in the auto industry and also protect the major U.S. auto manufacturers against loss of promised benefits or plan terminations.

One area that remains to be addressed in conference is the issue of airline pensions. The Cincinnati/Northern Kentucky Airport is one of the Nation’s busiest. It is home to Delta Air Lines’ second largest hub. Thousands of men and women in Kentucky’s Fourth District work for airlines. They depend on the retirement benefits provided by the airline industry.

Without a change in current law that allows air carriers with Defined Benefit plan obligations to make in-service reductions over a longer period of time—20 years—it is possible that some or all of these plans will be terminated, benefits reduced and liability shifted to the American taxpayer.

The airlines want to keep their promises to their employees. They want to honor their obligations. They do NOT want to terminate their pension plans nor to reduce benefits. But, they need to be equipped with the tools necessary to have a fighting chance to keep those promises.

The Senate airline pension language is carefully crafted to meet the particular concerns of all the major carriers and provide them with a 20 year period to meet their obligations.

Although we are not addressing this specific issue today, I strongly support continued pursuit in conference of the Senate-passed airline pension provision.

Finally, I wish to thank my colleagues on the Ways and Means and Education and Workforce Committees and their staff for the hard work that has brought us to this point today. I urge all of my colleagues to vote in favor of final passage.

Mr. VICLOSZKY. Mr. Speaker, I rise today in opposition to H.R. 2830. I am old enough to remember a time when everyone on my block in the Greenfield area of Gary, Indiana had a pension. The defined benefit pension system today, which protects the retirement security of over 44 million workers, retirees, and their families, is at a critical juncture. The number of defined benefit plans has declined from over 100,000 in 1985 to under 32,000 in 2004. While the number of active workers covered by such plans has dropped from over 40 million to under 20 million, an additional 20 million retirees depend on defined benefit plans for their retirement security.

Both the Congressional Budget Office and the Pension Benefit Guaranty Corporation have found that H.R. 2830 will add billions more to the PBGC’s already mounting deficit. According to the CBO, this legislation would increase the PBGC’s deficit by $9 billion dollars over the next ten years. The PBGC is already facing a deficit of $23 billion and could face additional liabilities of up to $100 billion in the near future.

In the five years leading up to the closings of U.S. Steel and Bethlehem Steel, steel companies in North America were filing for bankruptcy in record numbers, using the bankruptcy courts to break their contractual obligations and impose cuts or outright elimination of jobs, benefits, pensions and wages of steelworkers. In 2002, LTV Steel filed for Chapter 11 bankruptcy for protection from its creditors, including its obligations to its pension plan. In 2002, LTV filed Section 7 bankruptcy, which liquidated its assets. Today’s legislation would put additional pressure on an agency that is already picking up the slack because corporate America has used them as a dumping ground.

In addition, H.R. 2830 does not ensure fair treatment between workers and executives. The bill permits CEOs to receive executive golden parachutes at the same time employing workers are suffering dramatic reductions in retirement benefits. Under H.R. 2830, if an employer does not fund its pension plan above 80 percent, then workers cannot receive any increases in benefits or take a lump sum at retirement. No similar restriction is imposed on executives. If an employer does not fund above 60 percent, then the workers’ plan must be frozen with no new benefits allowed to accrue. Only at 60 percent are employers prohibited from transferring funds to executive compensation. However, employers can get tax breaks for their promises of future benefits to executives. I find this deplorable at a time when we are seeing companies like Delphi abuse the system. Under Chapter 11 reorganization, Delphi could award 500 of their executives cash bonuses of 30 percent to 250 percent of their base salary for exiting Chapter 11.

In closing Mr. Speaker, I urge my colleagues to oppose H.R. 2830. According to CBO, H.R. 2830 would increase the Federal deficit by over $70 billion from 2006–2015. It contains a variety of unfair tax incentives for corporate America that will not secure the pension of the hardworking men and women who are making our steel, mining our coal, building our homes, and flying our airplanes. Congress owes working Americans more.

Mr. PAUL. Mr. Speaker, while H.R. 2830, the Pension Protection Act of 2005, is not perfect, it does decrease the risk that employees will be deprived of pension benefits they were promised as part of their employment contracts. H.R. 2830 also decreases the likelihood that companies will be allowed to bail out private pensions, and reduces the tax burden on American workers to provide them with greater incentives and opportunities to save for their own retirements. Therefore, I will vote for this bill on final passage.

However, I oppose this rule, because I do not like the process under which this bill is being brought to the floor. The rule before us today does not allow any member to offer, or vote on, amendments that may improve this bill. In particular, I was hoping to vote on an amendment protecting United Airlines retirees from losing their pension benefits reduced or terminated even though United expects to make $1 billion in profit within 1 year of being discharged from bankruptcy. The Senate
Pursuant to House Resolution 602, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Speaker, I offer a motion to recommitt on behalf of myself and Congressman CARDIN.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GEORGE MILLER of California. Yes, I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

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

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

Sec. 1. SHORT TITLE and table of contents
Sec. 2. Definitions
Sec. 3. Special funding rules for plans
Sec. 4. Treatment of nonqualified deferred compensation
Sec. 5.养老金保护
Sec. 6. IRA eligibility for the disabled
Sec. 7. Combat zone compensation taken into account for purposes of determining limitation and deemed income
Sec. 8. Additional funding rules for multiemployer defined benefit plans
Sec. 9. Measures to forestall insolvency of multiemployer plans

TITLE II—PROTECTION OF PENSION BENEFITS IN BANKRUPTCY

Sec. 101. Interest rate for 2006 and 2007 funding requirements
Sec. 102. Government Accountability Office pension funding report

TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE EMPLOYEES

Sec. 103. Special funding rules for plans maintained by commercial airlines which are amended to cease future benefit accruals
Sec. 104. Recognition of legally mandated early retirement ages in determining amount of guaranteed benefits

TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

Sec. 105. Treatment of nonqualified deferred compensation plans when employer defined benefit plan is at risk
Sec. 106. Nonqualified deferred compensation reduced by percentage of underfunded plan upon bankruptcy of employer
Sec. 107. Termination fairness standard for nonqualified deferred compensation plans in connection with pension plans based on bankruptcy reorganization

TITLE V—FUNDING AND DEDUCTION RULES FOR MULTEmployer defined benefit plans

Sec. 108. Additional funding rules for multiemployer defined benefit plans
Sec. 109. Measures to forestall insolvency of multiemployer plans

Sec. 110. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation
Sec. 111. Withdrawal liability reforms
Sec. 112. Special rules for multiple employer plans of certain cooperatives

Sec. 113. Additional funding rules for multiemployer defined benefit plans

Sec. 114. Additional funding rules for multiemployer retirement plans

Sec. 115. Sunset of funding rules

Title VI—ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

Sec. 116. AmeriSave matching credit
Sec. 117. Manner in which AmeriSave matching credit allowed
Sec. 118. Increasing participation through automatic contribution arrangements
Sec. 119. Preemption of State laws precluding automatic enrollment or automatic rollovers
Sec. 120. Fiduciary standards relating to automatic or default investments
Sec. 121. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days
Sec. 122. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees
Sec. 123. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans
Sec. 124. Direct payment of tax refunds to individuals
Sec. 125. Allow rollovers by nongroup beneficiaries of certain retirement plan distributions

Title VII—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

Sec. 126. Treatment of annuity and life insurance contracts with a long-term care insurance feature
Sec. 127. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements
Sec. 128. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.
TITLE VII—REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000
Sec. 301. Reduction in benefit of rate reduction for families with incomes over $1,000,000.

TITLE I—INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS

SEC. 101. INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS.

(a) AMENDMENTS TO ERISA.—


(A) by striking “January 1, 2006” and inserting “January 1, 2008”, and

(B) by striking “and 2007” in the heading and inserting “2006, 2007, and 2008.”

(2) CURRENT LIABILITY.—Subclause (IV) of section 302(d)(7)(C)(i) of such Act (29 U.S.C. 1002(d)(7)(C)(i)(IV)) is amended—

(A) by striking “or 2005” and inserting “2006, 2007, and 2008,” and

(B) by striking “and 2007” in the heading and inserting “2006, 2007, and 2008.”


(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking “January 1, 2006” and inserting “January 1, 2008”, and

(B) by striking “and 2007” in the heading and inserting “2006, 2007, and 2008.”

(2) CURRENT LIABILITY.—Subclause (IV) of section 412(l)(7)(C)(i) of such Code is amended—

(A) by striking “or 2005” and inserting “2006, 2007, and 2008,” and

(B) by striking “and 2007” in the heading and inserting “2006, 2007, and 2008.”

(3) RISK-BASED PREMIUMS.—Subsection 412(r)(7)(B) of such Code is amended—

(A) by striking “or 2005” and inserting “2006, 2007, and 2008,” and

(B) by striking “and 2007” in the heading and inserting “2006, 2007, and 2008.”

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 102. GOVERNMENT ACCOUNTABILITY OFPENSION FUNDING REPORT.

(a) IN GENERAL.—The Secretary of the Treasury shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required under subsection (a) shall include—

(1) an analysis of the feasibility, advantages, and disadvantages of—

(i) requiring an employee pension benefit plan to insure a portion of such plan’s total investments,

(ii) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry, and

(iii) ammortizing a single-employer defined benefit pension plan’s short-term amortization base (referred to in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 (as amended by this Act)) over various periods of not more than 7 years.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.
SEC. 202. ELECTION BY EMPLOYER TO RESTORE PLAN UPON EMERGENCE FROM BANKRUPTCY.

(a) In General.—Title 40 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1347) is amended—

(1) by inserting "(a)" before "Whenever", and

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

"(b) Within 3 years after the date on which a plan sponsor of a plan terminated under section 4041(c)(2)(B)(i) or under section 4042 with respect to a reorganization case under title 11 of the United States Code, or under any plan year of a State or a political subdivision of a State (or with respect to a case described in section 4041(c)(2)(B)(i) which has been converted to such a reorganization case, which is otherwise dismissed, the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

(b) PREMIUM RATE FOR TERMINATED SINGLE-EMPLOYER PLANS WHICH ARE NOT RESTORED.—Subsection (a) of section 4006 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306) is amended by adding at the end the following:

"(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

"(A) IN GENERAL.—The requirements of this paragraph apply to any plan in which a plan sponsor of a plan terminated under section 4041(c)(2)(B)(i) or under section 4042 with respect to a reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State, (or with respect to a case described in section 4041(c)(2)(B)(i) which has been converted to such a reorganization case, which is otherwise dismissed), the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

"(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE EMPLOYEES

SEC. 301. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.

(a) In General.—If an election is made to have this section apply to an eligible plan—

(1) in the case of any applicable plan year beginning before January 1, 2007, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (d) for the plan for the plan year, and

(2) in the case of any applicable plan year beginning on or after January 1, 2007, the minimum required contribution determined under section 412 and 4971 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 and 412 of such Code applies—

(A) which is sponsored by an employer—

(i) which is a commercial airline passenger airplane, or

(ii) the principal business of which is providing commercial services to a commercial pas-

senger airplane, 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 such an election is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any other increase in liabilities with respect to a reorganization case, which is otherwise dismissed, the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

(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 such an election is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any other increase in liabilities with respect to a reorganization case, which is otherwise dismissed, the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

(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 such an election is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any other increase in liabilities with respect to a reorganization case, which is otherwise dismissed, the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

(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 such an election is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any other increase in liabilities with respect to a reorganization case, which is otherwise dismissed, the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

(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 such an election is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any other increase in liabilities with respect to a reorganization case, which is otherwise dismissed, the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.
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)(1) of such Code shall apply to such plan, but any charge or credit in the funding standard account under section 302 of such Act and section 412 of such Code shall be zero.

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

(A) UNFUNDED LIABILITY.—The term “unfunded liability” means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) AMORTIZATION PERIOD.—The term “amortization period” means the 20-plan year period beginning with the first applicable plan year.

(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this Act, 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.

(f) AMENDMENTS TO OTHER PROVISIONS.—(1) QUALIFICATION REQUIREMENT.—For purposes of subsection (a), if, with respect to any eligible plan to which this subsection applies—

(A) any applicable plan year includes the date of the enactment of this Act, and

(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment, the minimum required contribution under subsection (a)(1) for the eligible plan for such applicable plan year shall be determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of the minimum required contribution for the applicable plan year, and shall make the appropriate reallocation between the plans of any contributions for the applicable plan year that are determined under paragraphs (2) and (3) of subsection (c).

(B) the only assets taken into account for purposes of applying paragraphs (2) and (3) to such plan year shall be the assets 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 2003.

(g) SPECIAL RULE FOR PLANS ELECTING CERTAIN PLAN SPIN-OFFS.—For purposes of subsection (a), if, with respect to any eligible plan to which this subsection applies—

(A) the requirements of paragraphs (2) and (3) of subsection (c) shall not apply with respect to any contribution that was paid by the employer and specified in the election, and

(B) the minimum required contribution under subsection (d) for any plan year with respect to any contributions that were paid by the employer and specified in the election shall be reduced to zero.

(h) 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 section shall apply to terminations occurring 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:

(2) SPECIAL RULE FOR PLANS ELECTING CERTAIN PLAN SPIN-OFFS.—For purposes of this section during any period in which an election by a plan under section 301 of the Pension Protection Act of 2005 is in effect, then this section and section 404(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 with respect to any contribution that was paid by the employer and specified in the election for which an election under section 403(b) of such Act is in effect.”

(i) LIMITATION ON REDUCTIONS 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 apply for plan years beginning after the date of enactment of this Act.”

(j) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 4041(c) 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.

(k) SPECIAL RULES FOR TERMINATION OF ELIGIBLE PLANS.—During any period in which 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(1) of such Act which would otherwise determine that the termination would be unnecessary 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;

(2) if the Corporation determines such an agreement would make such termination unnecessary, take all necessary actions to ensure the agreement is entered into.

(l) AMENDMENTS TO OTHER PROVISIONS.—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).

(m) CERTAIN BENEFIT INCREASES AND INCREASES ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO COVER COSTS.—For purposes of paragraphs (2) and (3) of subsection (c), the minimum required contribution under section 302(b)(5) of such Act and section 412(b)(5) of such Code, as in effect for plan years beginning in 2003, shall not apply to any plan year and all subsequent plan years. Subject to subsection (d)(2), the minimum required contribution under section 302(b)(5) of such Act and section 412(b)(5) of such Code shall be treated as if it were subject to section 302(d) of such Act and section 412(d) of such Code.

(n) CERTAIN PLAN AMENDMENTS.—Any employers maintaining an eligible plan to which this subsection applies may make a one-time election with respect to any applicable plan year not to have this section apply to such plan year and all subsequent plan years. Subject to subsection (d)(2), the minimum required contribution under section 302(b)(5) of such Act and section 412(b)(5) of such Code shall be treated as if it were subject to section 302(d) of such Act and section 412(d) of such Code.

(o) ELECTRONIC OFFICE.—An employer maintaining an eligible plan to which this subsection applies may make an 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.

(p) EXCLUSION OF CERTAIN EMPLOYERS 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 not be treated as officers if their collective bargaining agreement described in such subparagraph is the result of negotiations conducted by a labor union that is in good standing with the Secretary of the Treasury, in the absence of such agreement, the employment relationship between the employer and the employees benefiting under the trust described in such subparagraph.”

(q) EFFECTIVE DATE.—The amendment made by this subsection applies to plan years beginning before, on, or after the date of the enactment of this Act.

(r) EXCLUSION.—Except as otherwise provided in this section, the amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

SEC. 302. RECOGNITION OF LEGALLY MANDATED EARLY RETIREMENT AGES IN DETERMINING AMOUNT OF GUARANTEE.

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(3)) is amended, in the flush matter following subparagraph (B), by
adding at the end the following: ‘‘If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual who is a participant in the plan in any such plan by reason of such service by substituting such age for age 65.’’.

(b) AGGREGATE LIMIT ON BENEFIT GUARANTEED.—Section 4022B(a) of such Act (29 U.S.C. 1222(b)(a)) is amended by adding at the end the following: ‘‘If, as of such date, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining a specified age which is less than age 65, this subsection shall be applied to any individual who is a participant in the plan in any such plan by reason of such service by substituting such age for age 65.’’.

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

TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

SEC. 401. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WITHIN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing for the funding of the plan) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (4) the following new paragraph:

‘‘(3) EMPLOYER’S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—

‘‘(A) If, during any period in which a defined benefit plan to which section 412 applies is in an at-risk status, assets are set aside (directly or indirectly) in a trust or other arrangement determined by the Secretary, or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

‘‘(B) if a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted, the employer shall reduce the amount of benefit under the non-qualified plan by the applicable percentage of underfunding in the pension.

(b) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the excess (if any) of 100 percent points over the funded current liability percentage (as defined in section 412(l)(6)), reduced as described in subparagraph (C) thereof:

‘‘(C) ADDITIONAL TAX.—The tax imposed by this chapter for any taxable year on any taxpayer with respect to whom a benefit is reduced under subparagraph (A) shall be increased by 100 percent of the amount of such reduction. Such amount shall not be treated as a tax for purposes of section 26(b)(2).

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to transfers or reservations of assets after December 31, 2005.

SEC. 402. TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.

(a) IN GENERAL.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

‘‘(g) TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.—

‘‘(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which a plan amendment is adopted that has the effect of implementing a termination of the plan under section 401(c) based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guarantee Corporation under section 4042 based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(a)(1)(A)) on the termination date, any covered deferred compensation plan established or maintained by such plan sponsor after the date of the adoption of such plan amendment shall meet the termination fairness standard of this subsection with respect to such plan amendment.

(b) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to such plan amendment if, during the 5-year period beginning on the date of the adoption of such plan amendment

‘‘(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan (irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation), and

‘‘(B) in the case of a covered deferred compensation plan providing for the deferral of compensation for purposes of preventing a plan amendment within the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is subject to substantiable risk of forfeiture), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

(c) DEFINITIONS.—For purposes of this subsection:

‘‘(A) Notice Date.—The term ‘notice date’ means, with respect to an amendment described in paragraph (1), the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2), and

‘‘(B) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042, the date of the application to the court under section 4042(c).’’

(b) CONFORMING AMENDMENTS.—(1) The amendments made by this Act shall apply to transfers or reservations of assets after December 31, 2005.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

SEC. 403. TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNEC TION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.

(a) IN GENERAL.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

‘‘(g) TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.—

‘‘(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which a plan amendment is adopted that has the effect of implementing a termination of the plan under section 401(c) based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guarantee Corporation under section 4042 based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(a)(1)(A)) on the termination date, any covered deferred compensation plan established or maintained by such plan sponsor after the date of the adoption of such plan amendment shall meet the termination fairness standard of this subsection with respect to such plan amendment.

(b) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to such plan amendment if, during the 5-year period beginning on the date of the adoption of such plan amendment

‘‘(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan (irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation), and

‘‘(B) in the case of a covered deferred compensation plan providing for the deferral of compensation for purposes of preventing a plan amendment within the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is subject to substantiable risk of forfeiture), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

(c) DEFINITIONS.—For purposes of this subsection:

‘‘(A) Notice Date.—The term ‘notice date’ means, with respect to an amendment described in paragraph (1), the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2), and

‘‘(B) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042, the date of the application to the court under section 4042(c).’’

(b) CONFORMING AMENDMENTS.—(1) The amendments made by this Act shall apply to transfers or reservations of assets after December 31, 2005.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

SEC. 404. TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.

(a) IN GENERAL.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

‘‘(g) TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.—

‘‘(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which a plan amendment is adopted that has the effect of implementing a termination of the plan under section 401(c) based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guarantee Corporation under section 4042 based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(a)(1)(A)) on the termination date, any covered deferred compensation plan established or maintained by such plan sponsor after the date of the adoption of such plan amendment shall meet the termination fairness standard of this subsection with respect to such plan amendment.

(b) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to such plan amendment if, during the 5-year period beginning on the date of the adoption of such plan amendment

‘‘(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan (irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation), and

‘‘(B) in the case of a covered deferred compensation plan providing for the deferral of compensation for purposes of preventing a plan amendment within the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is subject to substantiable risk of forfeiture), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

(c) DEFINITIONS.—For purposes of this subsection:

‘‘(A) Notice Date.—The term ‘notice date’ means, with respect to an amendment described in paragraph (1), the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2), and

‘‘(B) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042, the date of the application to the court under section 4042(c).’’

(b) CONFORMING AMENDMENTS.—(1) The amendments made by this Act shall apply to transfers or reservations of assets after December 31, 2005.
“(C) DISQUALIFIED INDIVIDUAL.—The term ‘disqualified individual’ means a director or executive officer of the plan sponsor.

“(D) TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—The termination of a plan which is a distress termination under section 4041(c) or a termination instituted by the Pension Benefit Guaranty Corporation under section 4042 is based on bankruptcy reorganization if the termination is in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor’s controlled group, of a petition seeking reorganization in such case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought).

“(E) TITLE IV TERMINOLOGY.—Any term used in this subsection which is defined in section 4001(a).

“(4) SPECIAL RULES.—

“(A) COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor’s controlled group, of a petition seeking reorganization in such case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought)

“(B) MULTIPLE AMENDMENTS.—The Secretary and the Secretary of the Treasury with respect to a plan amendment described in paragraph (1), the sponsor of the plan amendment acted in such a manner as to have the effect of implementing a distress termination of the plan under section 4041(c) of the Employee Retirement Income Security Act of 1974 based on reorganization or a termination of the plan initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act based on bankruptcy reorganization which the plan amendment is not sufficient for guaranteed benefits (within the meaning of section 4981(b)(2) of such Act) as of the proposed termination date, there is hereby imposed a tax on any failure to meet the termination fairness standard of paragraph (2) with respect to such plan amendment.

“(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of paragraph (2) if, during the 5-year period beginning on the date of the adoption of such plan amendment.

“(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan, irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation, and

“(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan, irrespective of whether the accrual in deferred compensation is made under such plan or such amendment) to a disqualified individual.

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to the amount of the accrual described in subsection (a)(2)(A) comprising the failure or the distribution described in subsection (a)(2)(B) comprising the failure.

“(c) LIABILITY FOR TAX.—The plan sponsor shall be liable for the tax imposed by this section.

“(d) DEFINITIONS.—For purposes of this section—

“(1) NOTICE DATE.—The term ‘notice date’ means with respect to an amendment described in subsection (a)(1)–

“(A) in the case of a distress termination under section 4041(d) of the Employee Retirement Income Security Act of 1974, the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2) of such Act,

“(b) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act, the date of the application for a liquidation under such Act,

“(2) COVERED DEFERRED COMPENSATION PLAN.—

“(A) IN GENERAL.—The term ‘covered deferred compensation plan’ means any plan providing for the deferral of compensation of a disqualified individual, whether or not

“(d) compensation deferred to an individual which is deferred under such plan is subject to substantial risk of forfeiture,

“(ii) the disqualified individual’s rights to the compensation deferred to such individual are no greater than the rights of a general creditor of the plan sponsor,

“(iii) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available by the plan sponsor for general creditors) solely the property of the (without being restricted to the provision of benefits under the plan),

“(4) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income attributable to such compensation or such income.

“(5) COORDINATION.—If the benefits of 2 or more defined benefit plans established in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor’s controlled group, of a petition seeking reorganization in such case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought)

“(4) TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—A termination of a plan which is a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 or a termination instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act is based on bankruptcy reorganization if the plan amendment is not sufficient for guaranteed benefits (within the meaning of section 4981(b)(2) of such Act) as of the proposed termination date, there is hereby imposed a tax on any failure to meet the termination fairness standard of paragraph (2) with respect to such plan amendment.

“(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of paragraph (2) if, during the 5-year period beginning on the date of the adoption of such plan amendment.

“(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan, irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation, and

“(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan, irrespective of whether the accrual in deferred compensation is made under such plan or such amendment) to a disqualified individual.

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to the amount of the accrual described in subsection (a)(2)(A) comprising the failure or the distribution described in subsection (a)(2)(B) comprising the failure.

“(c) LIABILITY FOR TAX.—The plan sponsor shall be liable for the tax imposed by this section.

“(d) DEFINITIONS.—For purposes of this section—

“(1) NOTICE DATE.—The term ‘notice date’ means with respect to an amendment described in subsection (a)(1)–

“(A) in the case of a distress termination under section 4041(d) of the Employee Retirement Income Security Act of 1974, the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2) of such Act,

“(b) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act, the date of the application for a liquidation under such Act,

“(2) COVERED DEFERRED COMPENSATION PLAN.—

“(A) IN GENERAL.—The term ‘covered deferred compensation plan’ means any plan providing for the deferral of compensation of a disqualified individual, whether or not

“(d) compensation deferred to an individual which is deferred under such plan is subject to substantial risk of forfeiture,

“(ii) the disqualified individual’s rights to the compensation deferred to such individual are no greater than the rights of a general creditor of the plan sponsor,

“(iii) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available by the plan sponsor for general creditors) solely the property of the (without being restricted to the provision of benefits under the plan),
and section 206(g) of the Employee Retirement Income Security Act of 1974 are administering so as to have the same effect at all times.

"(g) WAIVER.—

"(1) IN GENERAL.—In the case of any plan amendment having the effect of a termination described in subsection (a)(1), the Secretary may waive the application of any requirement of the termination fairness standard of section (a)(2) with respect to any disqualified individual who first commences service for the plan sponsor after the notice date with respect to such plan amendment.

"(2) The Secretary may grant any such waiver in the case of any plan amendment adopted before such notice date with respect to such plan amendment.

"(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 AND AMENDMENTS 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) over a period of 15 plan years any credit (if any) to the funding standard account under section 302(b)(3)(B) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005),

"(C) the amount necessary to amortize any accrued 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 any accumulated 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.

"(2) CHARGES 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) over a period of 15 plan years,

"(C) 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)(B) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

"(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 plan years any accumulated funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year.

"(3) 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 I 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 regulations to carry out the purposes of this title.

"(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 (if any) to the funding standard account, but such offset shall be taken before any subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

"(C) Plan payments to supplement 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 2222 of that Act shall reduce the amount of contributions considered received by the plan for the plan year.

"Sec. 501. FUNDING RULES FOR MULTIEmployer DEFINEd BENEFIT PLANS AND RELATED PROVISIONS.

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

501. FUNDING RULES FOR MULTIEmployer DEFINEd BENEFIT PLANS.

(a) In General.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 9908A(a) of the Internal Revenue Code of 1986) (as added by subsection (b)) based on a bankruptcy reorganization in a case under title 11 of the United States Code (or under any statute (or a political subdivision of a State) pending on such date).

TITLE V—FUNDING AND DEDUCTION RULES FOR MULTIEmployer DEFINED BENEFIT PLANS AND RELATED PROVISIONS.
“(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 F of title I of subchapter V of chapter 72 of subtitle D of title 26 or subsequent funding deficiency 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) ELICITATION FOR DEFERRED OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election in effect under section 413(d)(7)(F) (as in effect before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account described in subparagraph (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 determining costs, liabilities, and experience gains and losses under this subsection with the amount so determined under subparagraph (2)(B)(ii) not to apply to the amount so charged.

“(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, the funding standard account described in subparagraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by subtracting the number of years of the period during which such benefits are payable for ’14.

“(H) ACCRUALS DETERMINATION 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.

“(I) VALUATION OF ASSETS.—(A) IN GENERAL.—For purposes of this part, the value of the plan’s assets shall be determined based on the basis of any reasonable actuarial method of valuation which takes into account the value and which is permitted under regulations prescribed by the Secretary of the Treasury.

“(B) ELECTION WITH RESPECT TO BONDS.—The value of any 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 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.

“(J) 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.

“(K) RULES OF PRACTICE.—(A) which of each of which is reasonable (taking into account the experience and the plan and reasonable expectations), and

“(B) with, in a combination, the actuary’s best estimate of anticipated experience under the plan for the plan year and years following the plan year.

“(M) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section—

“(1) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

“(2) 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 under 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.

“(N) FULL-FUNDING.—If, as of the close of a plan year, a plan would (without regard to section 412) have an accumulated funding deficiency in excess of the full funding limitation determined under subparagraph (A) the funding standard account shall be credited (if any) with the amount of such excess.

“(O) ALL LIABILITIES.—(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 for purposes of such subparagraphs.

“(P) 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 a multiemployer plan that is funded under 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—

“(1) 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

“(2) the value of the plan’s assets determined under paragraph (2).

“(II) ADDITIONAL RULES.—(A) IN GENERAL.—For purposes of clause (I), assets shall not be reduced by any credit balance in the funding standard account.

“(B) 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 412(d)(3) of the Internal Revenue Code of 1986).

“(C) CURRENT LIABILITY.—For purposes of this paragraph—

“(1) IN GENERAL.—The term ‘current liability’ means all liabilities to employees and their beneficiaries under the plan.

“(2) TREATMENT OF UNPREDICTABLE CONTINUING 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.

“(I) 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).

“(M) MORTALITY TABLES.—(D) COMMISSIONERS’ STANDARD TABLE.—In the case of a plan established before the first plan year to which the first table prescribed under subparagraph (2) 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 mortality 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, 1980.

“(N) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1989, mortality tables used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and the data for such experience, except in prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

“(O) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

“(1) 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, 1985, and for disabilities which occur in plan years beginning on or after such date.

“(2) 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.

“(P) 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.

“(Q) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan’s current liability for purposes of this paragraph—

“(1) IN GENERAL.—If any rate of interest used under the plan (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

“(R) PERMISSIBLE RANGE.—For purposes of this subparagraph—

“(1) IN GENERAL.—Except as provided in subparagraph (2), 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 business day before the beginning of the plan year.

“(2) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subparagraph (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.

“(S) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

“(1) determined without taking into account the experience of the plan and reasonable expectations, or

“(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, the determination of experience gains and losses and a valuation of the plan’s liability shall be made not less frequently than once every five years, except that such determination shall be made not less frequently than once every year, or as required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B) VALUATION DATE.—

(1) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the period by which that determination is required to be made under section 1.412(c)(1) of the Treasury Regulations section 1.412(c)(1), the Secretary of the Treasury may extend the amortization period for a period of time (not in excess of three years) during which the 'Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to the extension described in subparagraph (A).

(2) 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—

(A) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of benefits for plan members and their beneficiaries, or a substantial curtailment of benefits levels or employee compensation, and

(B) be adverse to the interests of plan participants in the aggregate.

(C) APPLICABILITY.—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 determines to grant 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 404(a)(2)(1)) 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) CONSPICUOUS INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(4) USE OF SHORTFALL METHOD.—

(A) IN GENERAL.—The plan sponsor shall adopt and implement a funding improvement method 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

(C) If the plan is in critical status—

(i) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(ii) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement method 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 rehabilitation period,

(c) CONFORMING AMENDMENTS.—

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) A MULTIEMPLOYER PLAN—A multiemployer plan 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 assets and liabilities—

(1) IN GENERAL.—In making the determinations 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—

(i) reasonable anticipated employer contributions for the current and 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,

(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of all benefits 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, and

(iii) the market value of plan assets, plus

(ii) the sum of—

(I) the funded percentage of the plan is less than 65 percent, and

(II) the present value of assets and liabilities—

(1) IN GENERAL.—In making the determinations 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; and

(ii) determinations of future contributions.—Any actuarial projection of plan assets shall

(i) reasonable 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) the expiration of the collective bargaining agreements, which, if adopted, reasonably necessary to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan.

(3) 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.

(B) PLANS OTHER THAN 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 exceeds the lesser of 80 percent or a percentage equal to the sum of—

(ii) the percentage of the difference between 100 percent and the percentage under clause (i), and

(iii) there is no accumulated funding deficiency for the succeeding plan years.

(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, the plan sponsor shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, reasonably necessary to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements, which, if adopted, reasonably necessary to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan.
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 be treated for such year that the funding improvement period is 15 years rather than 10 years.

(6) UPDATES TO FUNDING IMPROVEMENT PLAN.

(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 contributions for the purpose of reflecting the experience of the plan, except that the schedule or schedules described in paragraph (1)(b)(1) 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.

If the plan sponsor does not adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 503(c)(2) as a failure to qualify for purposes of the plan’s actuary certifies under subsection (b)(3)(A) 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, that is, the year following the close of the period described in subparagraph (a) that the plan is in endangered status, and ending on the close of the plan year during which the plan is no longer in endangered status and is not in critical status.

(9) PLAN ADOPTED.

(a) PLAN ADOPTED.

If the plan fails to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code to the extent that the payment of any part or all of the tax imposed by section 4971 of such Code for the last plan year in such period (as determined from the tax liability imposed on such Code to the extent that the tax would be excessive or otherwise inequitable relative to the failure involved.

(b) WAIVER.

In the case of a failure described in paragraph (a) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive in whole or in part 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.

(c) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEmployER PLANS IN CRITICAL STATUS.

(i) IN GENERAL.—In any case in which a multiemployer plan is in critical status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and collective bargaining agreements in effect at the time of such plan year to ensure that the plan is not in endangered status under paragraph (a) for any succeeding plan year and that the plan year is no later than 120 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(ii) within 30 days after the adoption of the rehabilitation plan, 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 provide for the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, 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 adopt or amend a funding plan in a manner inconsistent with the requirements of such plan.

(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, unless—

(i) in the case of a plan in seriously endangered status, the plan actuary certifies that after taking into account any increase in contributions, the plan is still reasonably expected to meet the requirements under subsection (c) 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 required not 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 (as determined from the tax liability imposed on such Code to the extent that the tax would be excessive or otherwise inequitable relative to the failure involved.

(B) WAIVER.

In the case of a failure described in paragraph (a) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive in whole or in part 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.

(C) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEmployER PLANS IN CRITICAL STATUS.

(i) 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, 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 provide for the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(C) in the case of a plan in seriously endangered status, the plan actuary certifies that after taking into account any increase in contributions, the plan is still reasonably expected to meet the requirements under subsection (b)(3)(A) in accordance with the schedule contemplated in the funding improvement plan.

(4) PLAN ADOPTED.

(a) PLAN ADOPTED.

If the plan fails to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code to the extent that the payment of any part or all of the tax imposed by section 4971 of such Code for the last plan year in such period (as determined from the tax liability imposed on such Code to the extent that the tax would be excessive or otherwise inequitable relative to the failure involved.

(b) WAIVER.

In the case of a failure described in paragraph (a) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive in whole or in part 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.

(c) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEmployER PLANS IN CRITICAL STATUS.

(i) 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, 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 provide for the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(C) in the case of a plan in seriously endangered status, the plan actuary certifies that after taking into account any increase in contributions, the plan is still reasonably expected to meet the requirements under subsection (b)(3)(A) in accordance with the schedule contemplated in the funding improvement plan.
“(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternatives to those rates and other information relevant to emerging from critical status in accordance with the rehabilitation plan. The schedule or schedules described in subparagraph (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 those 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(c)) 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 period that is not the result of a noncritical status in effect during the plan adoption period or rehabilitation period, except 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 reduction 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 for delaying critical status 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 under paragraph (1)(B)(ii). 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.—

“(1) REHABILITATION PLAN.—The plan sponsor shall provide the rehabilitation plan and shall file the update with the plan’s annual report under section 104.

“(2) 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)(ii) shall be updated at least once every 3 years.

“(3) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor by bargaining agreements 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 multimember 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)(ii), the plan has 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 multimember 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 fuel rates 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 multimember plan.

“If a plan emerges from critical status as provided in subsection (i), the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subsection (i) 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)(2)(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 the limitations of section 308(c) or any extension of amortization periods under section 308(d).

“(C) 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)(3)(A) as a failure or refusal to file the plan’s annual report required to be filed with the Secretary under section 101(b)(4).

“(D) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of paragraph (C), the term ‘rehabilitation plan adoption period’ means the period beginning on the date of the certification under subsection (b)(2)(A) for the initial critical year ending on the day before the first day of the rehabilitation period.

“(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(ii) 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 plan with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

“(F) EMPLOYER IMPACT.—For 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 rehabilitation plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

“(G) 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 adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increases are paid for out of voluntary contributions not contemplated by the rehabilitation plan, and, after taking into account the increases, the 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 206(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 206(b)(1)(E)),

“(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay a monthly benefit (payable as a single life annuity beginning 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

“(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 204(b)(1)(G) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive reduction in benefits, or to any similar payment of benefits owed with respect to a prior period.

“(C) 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 multimember plan that provides for—

“(i) a reduction in the level of contributions for any participants,

“(ii) a suspension of contributions with respect to any participating employer,

“(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

“(iv) any 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 any benefit is payable. A plan which provides for a benefit under the plan may be adopted unless the amendment is required as a condition of
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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) By virtue of section 401(a)(9) of the Internal Revenue Code of 1986, if a plan

"(i) fails to meet the requirements of sub-

section (a)(9) by the end of the rehabilitation period, or

"(ii) has received a certification under sub-

section (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the required progress in meeting its requirements under the rehabilitation plan, or

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 de-

scribed 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.

"(C) EXPEDITED RESOLUTION OF PLAN Spons-

OR 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 develop-

ment and adoption of a funding improvement plan or rehabilitation plan.

"(b) NONBARGAINED PARTICIPATION.—

"(1) BOTH BARGAINED AND NONBARGAINED

EMPLOYER-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by a collective bargaining agreement and employees who are not so covered, if the plan is in en-

dangered status or in critical status, benefits of any nature, including surcharges on those employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the plan. The plan sponsor shall not contribute to the multiemployer plan for any year in which such an agreement is not in effect.

"(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 apply as if the employer were the bargaining parties, and its participation agree-

ment with the plan was a collective bar-

gaining 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) DETERMINATION BY A COLLECTIVE

BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section is not required with regard to the special rule in Treasury Regulation section 1.401(h)-6(d)(1)(D).

"(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this subsection, (A) ''active participant'' means—

"(1) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

"(2) I NACTIVE PARTICIPANT.—In connection with a multiemployer plan, a participant who is in covered service under the plan.

"(3) OBLIGATION TO CONTRIBUTE.—In connection with a multiemployer plan, the obligation to contribute by reason of such amendments.

"(4) PLAN SPONSOR.—In the case of a plan described under section 401(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the term 'plan sponsor' means the plan sponsor or that portion of the plan sponsor that has adopted a rehabilitation plan, on or after January 1, 2002, and before June 30, 2005, and

"(b) CAUSE OF ACTION TO COMPEL ADOPTION OF FUNDING IMPROVEMENT OR REHABILITATION PLAN.—Section 502(a)(5) of the Employee Retirement Income Security Act of 1974 is amended by redesignating subsection (g) as subsection (h), and inserting after subsection (f) the following:

"(5) MULTIEmployER PLANS IN CRITICAL STATUS.—No tax shall be imposed under this section on 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(e).

"(d) NO ADDITIONAL CONTRIBUTIONS RE-

QUIRED.—

"(1) Section 302(b) of the Employee Retire-

ment Income Security Act of 1974 is amended by adding by the end the following new paragraph:

"(2) 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 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).

"(e) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amend-

ed by the preceding provisions of this Act) is amended by inserting after the item relating to section 301 the following new item:

"(Sec. 305. Additional amendments for multi-

employer 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 2005.

"(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan which

-- (A) with respect to which benefits were re-

duced 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 restrictions on the payment of or accrual of such benefits would otherwise apply by reason of such amendments.

SEC. 305. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.

"(a) ADVANCE DETERMINATION OF IMPELLING INSOLVENCY OVER 5 YEARS.—Section
(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 determines that the plan will not be insolvent in any of the next 5 plan years.”;
(3) by inserting after subsection (d)(1) the following:
(b) Effective Date.—The amendments made by this subsection shall apply with respect to determinations made in plan years beginning after 2006.

SEC. 504. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION.

In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—
(1) is a plan described in section 4231 of such Code;
and
(2) provides for special withdrawal liability rules under section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005);
the amendments made by sections 201, 202, 211, and 212 of this Act shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).

SEC. 505. WITHDRAWAL LIABILITY REFORMS.

(a) Repeal of Limitation on Withdrawal Liability for Employers. In General.—(Subsections (b) and (d) of section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1385) are repealed.

(1) CONFORMING AMENDMENTS.—Subsection (c) of such section is amended—
(i) in the matter after January 1, 2006, and
(ii) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively;
(b) Effective Date.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

SEC. 506. SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN CO-OPERATIVES.

(a) General Rule.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by this subtitle shall not apply to plan years beginning before the earlier of—
(1) the first plan year for which the plan ceases to be an eligible cooperative plan, or
(2) January 1, 2017.

(b) Eligible Cooperative Plans.—For purposes of this section, “eligible cooperative plan” means a plan which is maintained by more than 1 employer and at least 85 percent of the employers—
(i) are parties to a collective bargaining agreement entered into after January 1, 2006,
(ii) whose collective bargaining agreements cover employees primarily employed by the plan;
(iii) in which the plan is an eligible cooperative plan for its plan year which includes such date;
and
(iv) after January 1, 2006, a party to an agreement that was approved by the Pension Benefit Guaranty Corporation before the date of the enactment of the Pension Security and Transparency Act of 2005, and
(b) Effective Date.—The amendments made by this subsection shall apply with respect to plan years beginning after 2006.

SEC. 511. FUNDING RULES FOR MULTIEmployER PLANS.

(a) General Rule.—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:

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

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, of 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 plan 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 in accordance with section 4205(b)(2)(A) as amended by inserting “or to an entity or entities owned or controlled by the employer” after “to another location”.

(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) the net experience 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 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
(D) 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 rules of subsection (c)(3)(C) of section 4205 of the Employee Retirement Income Security Act of 2005.

(3) Amounts to be Amortized.—For a plan year, the funding standard account shall be credited with the sum of—
(A) the amount 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) over a period of 15 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
(C) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 15 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
(D) 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 rules of subsection (c)(3)(C) of section 4205 of the Employee Retirement Income Security Act of 2005.

(4) Plan Year for Which the Funding Standard Account Is Determined.—The funding standard account under subsection (a) of this section for any plan year shall be determined in accordance with the rules of subsection (c)(3)(C) of section 4205 of the Employee Retirement Income Security Act of 2005.

(5) Period for Determining Insolvency.—The plan sponsor of a multiemployer plan shall, at least annually, determine whether 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 determines that the plan will not be insolvent in any of the next 5 plan years.

(6) Effective Date.—The amendments made by subsection (a) and (b) of this section shall apply with respect to plan years beginning after December 15, 2005.

SEC. 432. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.

(a) In General.—Subsection (b) 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) is amended—
(1) by striking “of which are held by more than 1 employer and at least 50 percent of such contributions are held by more than 1 employer” and inserting “of which is held by more than 1 employer”,
and
(2) by striking “as of the date of the enactment of the Pension Security and Transparency Act of 2005” and inserting “as of the date of the enactment of the Employee Retirement Income Security Act of 1974”.

(b) Effective Date.—The amendments made by subsection (a) of this section shall apply with respect to plan years beginning after December 15, 2005.

SEC. 433. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.

(a) In General.—Section 4243(d)(1) is amended—
(1) by striking “is amended” and inserting “is amended and charged solely as provided in this section.”
(2) by striking “in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005” and inserting “in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 2005”;
and
(c) the amendment made by subsection (a)(2) shall apply with respect to any plan year beginning after December 15, 2005.

(b) Effective Date.—The amendments made by this section shall apply with respect to plan years beginning after 2006.
was in reorganization.

(2) VALUATION OF ASSETS.—

(A) IN GENERAL.—For purposes of this paragraph, the extent of any accumulated funding deficiency 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 as follows:

(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 GAINS OR LOSSES.—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 3212, 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 limit—

(A) the funding standard account shall be credited with the amount of such excess, or

(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.—

(1) IN GENERAL.—In no event shall the full-funding amount determined under subparagraph (A) be less than the excess (if any) of—

(2) 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

(3) For purposes of clause (1), assets shall not be reduced by any credit balances 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 OF PURPOSES OF THIS PARAGRAPH.—

(1) IN GENERAL.—The term ‘current liability’ means all liabilities to employees and their beneficiaries under the plan.

(2) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (1), 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.

(3) 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).

(4) MORTALITY TABLES.—

(A) 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.

(B) SECRETARIAL AUTHORITY.—The Secretary shall establish separate mortality tables for the disabled. Notwithstanding clause (iv)—

(I) IN GENERAL.—The Secretary shall establish separate mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection. The table shall be based upon the actuarial 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.

(2) 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.
have been made on such last day. For purposes of determining a plan's current liability for purposes of this paragraph—

"(1) In general.—If any rate of interest used 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.

"(2) Permissible range.—For purposes of this subparagraph—

"(i) In general.—Except as provided in subparagraph (A) of this clause, 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) Secrecy.

"(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 a period of one 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 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).

"(B) Additional extension.

"(i) General.—If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension 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).

"(ii) 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, such plan will not be underfunded as of the date of the certification.

"(iii) 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 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 (1).

"(B) Determination.—The Secretary may grant an extension under subparagraph (A) if the plan sponsor provides evidence that the Secretary, taking into account any extension of amortization periods for any multiemployer plan submitted to the Secretary, the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years.

"(C) Action by Secretary.

"(i) Consideration of relevant information.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

"(ii) 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 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 412(b) of such Code.
(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).

(ii) the plan is described in this subparagraph:
(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 5 succeeding plan years (4 succeeding plan years if the current plan year is less than 65 percent, or 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:
(1) the plan's normal cost for the current plan year, plus interest (determined at the rate of 5 percent 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.
(2) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and
(3) 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:
(1) 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 or critical status for such plan year, and
(ii) in the case of a plan which is in endangered or critical status for such plan year, whether or not the plan is in critical status for such plan year, and
(B) Actuarial projections of assets and liabilities.—

(4) 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) employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines, 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.

(5) Funding improvement plan.—For purposes of this section—

(A) In general.—A funding improvement plan is a plan which includes, in addition to the contributions required by section 431(d), any contributions, including options or a range of options to be proposed to the bargaining parties, which, including any 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 described in subparagraph (A), the contributions 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 percentage which equals or exceeds the percentage which is 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 exceeds the percentage which equals or exceeds the percentage which is determined under clause (i), and
(ii) there is no accumulated funding deficiency for any plan year subsequent to the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

(6) 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 agreement under which the multiemployer plan is maintained 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 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 under the plan 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 to the Secretary under section 4971(g) that the plan sponsor—

(1) may not adopt a funding improvement plan by the date specified in paragraph (1)(A) unless the plan sponsor—

(A) submits a rehabilitation plan to the Secretary under so as to increase benefits, including future benefit accruals, unless—

(B) 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 necessary to emerge from critical status and

(C) new direct or indirect exclusion of any multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with the section (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 recovery objective of 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 such plan year for which the 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 schedule as the Secretary determines (A) that provides for

(i) an increase in the plan’s funded percentage of

(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) W AIVER.—In the case of a plan 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.

(C) R EHABILITATION 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 (c)(3), or

(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 reflect reductions or eliminations of contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and contributions that are part of the schedule or schedules are treated for purposes of 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.

(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 rehabilitation plan shall be—

(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 benefit accruals or increases in contributions, as agreed to by the bargaining parties, or any combination of such actions,

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon examination of all reasonable measures, the plan cannot 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 4265 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, it is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

(1) 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.

(2) 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 such schedule under paragraph (1)(B)(i) shall be updated at least once every 3 years.

(3) 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.

(4) 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 (4), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

(5) 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 a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan;

(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 plan participants in such multiemployer plan;

(B) EMERGENCE.—A plan in critical status shall remain in such status for 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 any of the 9 succeeding plan years, without regard to the use of the shortfall method or any extension of amortization periods under section 430(d).

(6) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (5)(A) shall result in a penalty 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 adopt a rehabilitation plan to the Secretary of Labor. Such penalty shall be determined by the plan sponsor based on the contributions required to be made with respect to a participant or to 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 date for the benefit increase.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units with the contributions required to be made within the meaning of section 101(b)(4) of such Act.

(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 date for the benefit increase.

(8) EMPLOYER’S IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by the plan to the plan participants in this subsection 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.

(9) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

(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 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, or

(C) ADDITIONS DISRECOBARRED 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.

(10) OFFICIAL 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;

(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 any other applicable law.

(11) FAILURE TO MEET REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan—

(i) fails to meet the requirements of subsection (b)(3), (4), or (5) of the last sentence of paragraph (1) so as to be inconsistent with the rehabilitation plan;

(ii) has not adopted a rehabilitation plan under subsection (b)(3)(A)(i) for 3 consecutive plan years so as to be inconsistent with the rehabilitation plan;

the plan shall be treated as having an accumulated funding deficiency for purposes of determining an employer’s withdrawal liability under section 4201 of such Act for each of the last 3 plan years, 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 section.

("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 Labor shall determine that no tax imposed by section 4971 to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure to file a timely report.

(5) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan or a rehabilitation plan, a 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.

(6) NONBARGAINED PARTICIPANTS.—

(1) CONSTRUCTED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered under collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of any contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the funded percentage 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 entered into on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(7) DEFINITIONS; ACTUARIAL METHOD.—

(A) The term ‘actuarial method’ means—

(i) the value of the plan as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(B) the term ‘fund current liability’ means—

(i) for a plan in endangered status, the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(C) the term ‘feasible method’ means—

(i) the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(D) the term ‘obligation’ means—

(i) the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(E) the term ‘plan’ means—

(i) the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(F) the term ‘plan’ means—

(i) the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(G) the term ‘plan’ means—

(i) the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(H) the term ‘plan’ means—

(i) the value of the plan’s unfunded current liability as of the date for adoption of a funding improvement or rehabilitation plan during any period after December 31, 2014, as determined pursuant to a plan amendment adopted after December 31, 2013, 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 section 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

I. CONGRESSIONAL RECORD
"(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) DETERMINATION.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2006.

(2) EXCEPTION.—The amendments made by subsection (b) shall apply to years beginning after December 31, 2005.

SEC. 522. TRANSFER OF EXCESS PENSION ASSETS TO MULTIEmployER HEALTH PLAN.

(a) IN General.—Section 4975(e)(3) 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) APPLICABILITY TO MULTIEmployER PLAN.—In the case of any plan to which section 40(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 multi-employer plan shall not apply, and

"(B) the amendment made by subsection (a) on the application of this section to a multi-employer plan shall not apply 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 that section 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.—


(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking "American Jobs Creation Act of 2004" and inserting "Pension Security and Transparency Act of 2005".

(3) Section 408(b)(13) of such Act (29 U.S.C. 1108(b)(13)) is amended by striking "American Jobs Creation Act of 2004" and inserting "Pension Security and Transparency Act of 2005".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers made in taxable years beginning after December 31, 2004.

TITLE VI—ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

SEC. 601. AMERISAVE MATCHING CREDIT.

(a) IN General.—Subpart C of part IV of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. AMERISAVE MATCHING CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 100 percent of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed the applicable limit.

"(b) APPLICABLE LIMIT.—For purposes of this section:

"(1) IN General.—The applicable limit is $1,000, reduced (but not below zero) by the reduction amount for each $1,000 (or fraction thereof) with which the taxpayer’s adjusted gross income for the taxable year exceeds the threshold amount.

"(2) REDUCTION AMOUNT; THRESHOLD AMOUNT.—For purposes of paragraph (1), the reduction amount and the threshold amount shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>In the case of</th>
<th>The reduction amount:</th>
<th>The threshold amount:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint return</td>
<td>$0</td>
<td>$50,000</td>
</tr>
<tr>
<td>Head of a household</td>
<td>$66.67</td>
<td>$37,500</td>
</tr>
<tr>
<td>All other cases</td>
<td>$100</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

"(3) JOINT RETURN.—In the case of a joint return, this subsection shall be applied separately to each individual filing such return, except that for purposes of paragraph (1), the aggregate gross income shall be their combined adjusted gross income of the taxpayer.

"(4) COORDINATION WITH MANNER IN WHICH CREDIT ALLOWED.—The credit under subsection (a) shall be allowed only as provided in section 430.

"(5) ELIGIBLE INDIVIDUAL.—For purposes of this section—

"(1) IN General.—The term ‘eligible individual’ means any individual if such individual has attained the age of 18 as of the close of the taxable year.

"(2) DEPENDENTS AND FULL-TIME STUDENTS NOT ELIGIBLE.—The term ‘eligible individual’ shall not include—

"(A) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual’s taxable year begins, and

"(B) any individual who is a student (as defined in section 152(f)).

"(d) QUALIFIED RETIREMENT SAVINGS CONTRIBUTIONS.—For purposes of this section—

"(1) IN General.—The term ‘qualified retirement savings contributions’ means, with respect to any taxable year, the sum of—

"(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual.

"(B) the amount of—

"(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

"(ii) any employer compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(b). For purposes of determining distributions received during which the spouse receives the distribution, such taxable year and for the taxable year in which such distribution is received, there shall not be taken into account any prior application of this paragraph.

"(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4975(c)).

"(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—

"(A) IN General.—The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period (or any applicable type to which such contributions under paragraph (1) may be made). The preceding sentence shall not apply to the portion of any distribution which is includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

"(B) Testing Period.—For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes such taxable year and the 3 preceding taxable years.

"(C) EXCEPTED DISTRIBUTIONS.—There shall not be taken into account under subparagraph (A)—

"(1) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

"(2) any distribution to which section 408A(d)(3) applies.

"(D) TREATMENT OF DISTRIBUTIONS RECEIVED BY SPouse OF INDIVIDUAL.—For purposes of determining the distribution described in subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

"(E) ADDITIONAL TAX ON EARLY WITHDRAWALS.—

"(A) IN General.—If with respect to a taxable year there is a qualified net withdrawal, the amount of tax imposed by this chapter for such taxable year shall be increased by the amount determined under subparagraph (B).

"(B) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph is the aggregate decrease in credits allowed under this section for any of the preceding 10 taxable years if the disqualified net withdrawals were applied against (and operated to reduce) the qualified retirement savings contributions taken into account under section (a). Such reduction shall be applied in order beginning with the first taxable year in such 10-year period and shall take into account any prior application of this paragraph.

"(C) DISQUALIFIED NET WITHDRAWALS.—The term ‘disqualified net withdrawals’ means the aggregate distributions subject to tax under section 72(t) for the taxable year over the qualified retirement savings contributions for the taxable year.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) ADJUSTED GROSS INCOME.—Adjusted gross income shall be determined without regard to sections 91, 931, and 933.

"(2) INVESTMENT IN THE CONTRACT.—Any credit under this section shall be disregarded in determining investment in the contract.

"(f) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

"(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2010.

(b) REPEAL OF SAVERS CREDIT.—Subpart A of part IV of subchapter A of chapter 1 of such Code is amended by striking section 23B (relating to elective deferrals and IRA contributions by certain individuals).

(c) CONFORMING AMENDMENTS.—

(1) Section 26(k)(2) of such Code is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (B) and inserting ", and", and by inserting after subparagraph (B) the following new subparagraph:

"(C) INCREASED CREDIT FOR TAXPAYERS WITH SUPERIOR EARNINGS.—

"(i) IN General.—The credit allowable by section 26(b)(2) is increased by $25 for each $1,000 (or fraction thereof) by which the taxpayer’s adjusted gross income for the taxable year exceeds $25,000.

"(ii) Any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

"(2) Section 24(b)(3)(B) of such Code is amended by striking "sections 23 and 23B"

(3) Section 26(e)(1)(C) of such Code is amended by striking "25B".

(4) Section 26(e)(1)(A) of such Code is amended by striking sections 23, 24, and 25B and inserting sections 23 and 24.

(5) Subchapter C of part IV of subchapter A of chapter 1 of such Code is amended—

(A) by redesignating section 36 as section 37, and

(B) by redesignating section 25B, as moved by paragraph (1), as section 36.
(6) Section 904(b) of such Code is amended by striking "sections 23, 24, and 25B" and inserting "sections 23 and 24".

(7) Section 1460C of such Code is amended by striking the item relating to section 36 and inserting the following: "Sec. 36. AmeriSave matching credit."

(8) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 36 and inserting the following: "Sec. 36. AmeriSave matching credit."

(9) The table of sections for subpart A of part II of such Code is amended by inserting the item relating to section 265B.

(10) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "-, or from section 36 of such Code" before the period at the end.

(d) Effective date. — The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 402. MANNER IN WHICH AMERISAVE MATCHING CREDIT ALLOWED.

(a) In general. — Subchapter B of chapter 65 of the Internal Revenue Code of 1986 (relating to rules of special application) is amended by adding at the end the following new section:

"SEC. 6430. MANNER IN WHICH AMERISAVE MATCHING CREDIT ALLOWED.

"(a) General rule. — The credit allowed under section 36 shall be allowed only as provided in this section.

"(b) Amount paid directly to retirement plan. — The credit allowed under section 36 for a taxable year shall be paid directly by the Secretary to a plan which qualified retirement savings contributions (as defined by section 38(d)) may be made, as specified by the taxpayer on the return for such taxable year.

"(c) Treatment of amounts received by plans. —

"(1) Certain rules disregarded. — Amounts paid under this section to a retirement plan shall be disregarded for all purposes in determining whether the plan meets the applicable requirements of subtitle A.

"(2) Acceptance by plans. — A plan to which payments may be made under this section shall not fail to be treated as qualified merely on account of the receipt of such payments.

"(d) Amount not treated as credit or refund. — Except as provided by subsection (b), the credit allowed under section 36 shall not be used as a credit under subtitle A or as a refund of taxes paid.

"(e) Regulations. — The Secretary shall prescribe regulations with respect to the application of this section.

(b) Clerical amendment. — The table of sections for subchapter B of chapter 65 of such Code is amended by adding at the end the following new item:

"Sec. 6430. Manner in which AmeriSave matching credit allowed.

(c) Effective date. — The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 603. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) Amendments to the Internal Revenue Code of 1986. —

(1) In general. — Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangements) is amended by adding at the end the following new paragraph:

"(3)(A) In general. — A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

"(B) Qualified automatic contribution arrangement. — For purposes of this paragraph, the term 'qualified automatic contribution arrangement' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

"(C) Automatic deferral. — (i) In general. — The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have all employer contributions made on the employee's behalf in an amount equal to at least 2 percent of the employee's compensation.

(ii) Application of certain other rules. — The rules of paragraphs (2)(B)(i) and (3)(B) shall apply for purposes of clause (I).

(iii) Withdrawal and vesting restrictions. — An arrangement shall not be treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(iv) Application of certain other rules. — The rules of paragraphs (2)(B)(i), (2)(B)(ii), and (3)(B) shall apply for purposes of subparagraphs (E)(ii) and (F).

(b) General rule. — The credit allowed under section 416(g)(4)(H) of such Code is amended by adding the following new paragraph (I):

"(I) ELECTIVE CONTRIBUTIONS.

(i) In general. — The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have all employer contributions made on the employee's behalf in an amount equal to at least 2 percent of the employee's compensation.

(ii) Application of certain other rules. — The rules of paragraphs (2)(B)(i) and (3)(B) shall apply for purposes of clause (I).

(iii) Withdrawal and vesting restrictions. — An arrangement shall not be treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(iv) Application of certain other rules. — The rules of paragraphs (2)(B)(i), (2)(B)(ii), and (3)(B) shall apply for purposes of subparagraphs (E)(ii) and (F).

(v) Notice requirements. — A notice shall not be treated as failing to meet the requirements of clause (i) with respect to an employee merely on account of the receipt of such notice or to have any effect as having been made under clause (i) unless it is written notice of the employee's rights and obligations under the arrangement which:

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations,

(II) is written in a manner calculated to be understood by the average employee to whom such notice is sent, and

(III) is delivered not later than the effective date of the arrangement and before the first regular investment election by the employee, and

(vi) non opted out. — An arrangement shall be treated as meeting the requirements of this subparagraph if it is an elective arrangement which:

(I) is required, without regard to whether the employee makes any elective contributions, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

(II) is treatment as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(III) is excluded from the definition of top-heavy contribution arrangements.

(IV) is not treated as a group coverage plan.

(V) is treated as failing to meet the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VI) is not treated as failing to meet the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VII) is not treated as failing to meet the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VIII) is not treated as failing to meet the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(b) General rule. — An arrangement shall not be treated as meeting the requirements of paragraph (3)(B) unless:

(1) the notice is written notice of the employee's rights and obligations under the arrangement which:

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations,

(II) is written in a manner calculated to be understood by the average employee to whom such notice is sent, and

(III) is delivered not later than the effective date of the arrangement and before the first regular investment election by the employee, and

(2) the arrangement:

(I) is a qualified automatic contribution arrangement,

(II) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(III) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(IV) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(V) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VI) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VIII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(V) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VI) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VIII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(b) General rule. — An arrangement shall not be treated as meeting the requirements of paragraph (3)(B) unless:

(1) the notice is written notice of the employee's rights and obligations under the arrangement which:

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations,

(II) is written in a manner calculated to be understood by the average employee to whom such notice is sent, and

(III) is delivered not later than the effective date of the arrangement and before the first regular investment election by the employee, and

(2) the arrangement:

(I) is a qualified automatic contribution arrangement,

(II) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(III) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(IV) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(V) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VI) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VIII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(V) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VI) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(VIII) is treated as meeting the requirements of clause (i) unless the minimum vesting period (including matching contributions) is 5 years.

(b) General rule. — The amendments made by this section (other than section 416(g)(H)) of such Code are amended by inserting "or (401(k)3)" after "3(10)(2)".

(b) Matching contribution rules. — Clause (ii) of section 416(g)(H) of such Code is amended by inserting "or (401(k)13)" after "or (401(k)12)".
amended by inserting "or 401(m)(12)" after "section 401(m)(11)".

(4) CORRECTIVE DISTRIBUTIONS.—

(A) IN GENERAL.—Section 414 of such Code (relating to whom such special rules shall apply) is amended by adding at the end the following new subsection:

"(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

"(1) IN GENERAL.—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee, to the employer plan, or to the employee directly in

(ii) which are attributable to contributions of such Code is amended by inserting

than the first April 15 following the taxable year in which such contribution was made.

"(2) ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.—For purposes of this subsection—

(A) section 401(a) which is exempt from tax under

(b) AUTOMATIC CONTRIBUTION.—The term 'automatic contribution' means contributions made by the employee plan under any arrangement under which contributions made by the employee are invested at the end of the following new subsection:

such Code is amended by inserting

"(1) the establishment or operation of, or making of contributions to, a pension plan under a qualified automatic enrollment arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986), or

"(2) a distribution described in section 401(a)(31)(B) of the Internal Revenue Code of 1986 or the establishment or operation of an individual retirement plan (as defined in section 7701(a)(37) of such Code) allowing receipt of such distributions.

"(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to actions (described in paragraph (1) or (2) of section 514(b) of the Employee Retirement Income Security Act of 1974 (added by this subsection)) taken before, on, or after the date of the enactment of this Act.

SEC. 605. FIDUCIARY STANDARDS RELATING TO AUTOMATIC OR DEFAULT INVESTMENTS.

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

"(e)(1) A fiduciary with respect to an individual retirement plan (as defined in section 72(t) on a distribution from an

(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount' means the lesser of—

(i) the amount of automatic contributions made during the applicable period which the employee elects to have the employer make such contributions on behalf of the employee until the employee affirmatively elects not to have such contributions made on his or her behalf;

(ii) the amount of automatic contributions made during the period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to actions (described in paragraph (1) or (2) of section 514(b) of the Employee

(ii) are attributable to employer contributions made on behalf of the employee, or to the employee directly in

such Code is amended by inserting

arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986) shall not be treated as meeting the standards of this paragraph if such expenses exceed the expenses normally charged by the trustee or custodian of a comparable individual retirement plan established to receive contributions (as defined in section 408(d)(3) of such Code) which are not distributions described in section 401(a)(31)(B) of such Code.

(b) EFFECTIVE DATE.

(1) The requirements of paragraph (2)(C) shall be treated as satisfied with respect to investments provided for by a plan to the extent such investments consist of—

(A) a balanced portfolio comprised of both equity investments and fixed income investments provided for by a financial institution (or similar financial entity) that is regulated by the United States or a State in any case in which—

(i) the equity investments are broadly diversified by the Secretary under regulations, guidelines, or other administrative guidance, actively managed funds that are broadly diversified so as to minimize the risk of large losses, and

(ii) the stable value or fixed income investments are designed to at least 20 percent of the total (measured in terms of fair market value), and

(II) are either diversified to minimize the risk of large losses or are obligations (which may include inflation-protected obligations) issued by the United States, or

(B) stable value investments.

For purposes of this paragraph, the term 'stable value investments' means investments provided by a financial institution regulated by the United States or a State that—

(i) are designed to at least 20 percent of the total (measured in terms of fair market value), and

(ii) are either diversified to minimize the risk of large losses or are obligations (which may include inflation-protected obligations) issued by the United States, or

(B) stable value investments.

For purposes of this paragraph, the term 'stable value investments' means investments provided by a financial institution regulated by the United States or a State that—

(i) are designed to at least 20 percent of the total (measured in terms of fair market value), and

(ii) are either diversified to minimize the risk of large losses or are obligations (which may include inflation-protected obligations) issued by the United States, or

(B) stable value investments.

For purposes of this paragraph, the term 'stable value investments' means investments provided by a financial institution regulated by the United States or a State that—

(i) are designed to at least 20 percent of the total (measured in terms of fair market value), and

(ii) are either diversified to minimize the risk of large losses or are obligations (which may include inflation-protected obligations) issued by the United States, or

(B) stable value investments.

For purposes of this paragraph, the term 'stable value investments' means investments provided by a financial institution regulated by the United States or a State that—

(i) are designed to at least 20 percent of the total (measured in terms of fair market value), and

(iii) are attributable to employer contributions made on behalf of the employee, or to the employee directly in

such Code is amended by inserting

(ii) the period which begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to actions (described in paragraph (1) or (2) of section 514(b) of the Employee Retirement Income Security Act of 1974 (added by this subsection)) taken before, on, or after the date of the enactment of this Act.

SEC. 604. PREEMPTION OF STATE LAWS PREVENTING AUTOMATIC ENROLLMENT OR AUTOMATIC ROLLOVERS.

(a) IN GENERAL.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) EFFECTIVE DATE.—The provisions of this title shall supersede any and all State laws insofar as they may preclude, or have the effect of precluding—

(i) the establishment or operation of, or making of contributions to, a pension plan under a qualified automatic enrollment arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986), or

(ii) a distribution described in section 401(a)(31)(B) of the Internal Revenue Code of 1986 or the establishment or operation of an individual retirement plan (as defined in section 7701(a)(37) of such Code) allowing receipt of such

"(3)(A) The expenses associated with an investment meet the standards of this paragraph if they do not exceed reasonable expenses. Such expenses shall not be treated as reasonable expenses solely because—

(i) the expenses exceed the expected investment returns for that year and cause a reduction in principal.

(ii) they do not exceed the expected investment returns for that year and cause a reduction in principal.

"(B) For purposes of subparagraph (A), the term 'expected investment returns for that year and cause a reduction in principal.'
or other aspects of the constituent investments to the extent such change or variation is based on:

(i) automatic rebalancing or variable investment returns prior to periodic rebalancing,

(ii) the participant’s age, or

(iii) other factors relating to the participant, as years under management, other retirement plan coverage, financial situation, or investment preferences expressed to the plan by the participant; or

(D) by any investment which such investment consists of interests in real estate or real estate-based investments, if such interests are broadly diversified and do not comprise more than 0.5 percent of the total fair market value of the assets invested in securities issued by, or interests in the property of, any single person.

(B) For purposes of subparagraph (A), any person and all affiliates thereof shall be treated as a single person. A corporation that is an affiliate of a person if such corporation is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1986, excepting any applicable percentage shall be substituted for ‘80 percent’ wherever the latter percentage appears in such section) of which person is a member. For purposes of the preceding sentence, the term ‘applicable percentage’ means 50 percent, or such lower percentage as the Secretary determines by regulation.

A person other than a corporation shall be treated as an affiliate of any other person to the extent provided in regulations of the Secretary.

(8)(A) The Secretary may issue regulations or other administrative guidance specifying the manner in which investments under independent professional investment management pursuant to sections 402(c)(3) and 403(a)(2) and other qualifying automatic investments may serve as the default investment alternative to which section 401(a)(31) refers to in subclause (III) of such section; provided, that regulations, guidelines, or other administrative guidance pursuant to section 404(e) of the Employee Retirement Income Security Act of 1974, as amended, shall be consistent with the requirements of subsection which are consistent with the regulations, guidelines, or other administrative guidance pursuant to section 404(e) of the Employee Retirement Income Security Act of 1974, as amended.

SEC. 606. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 170 DAYS.

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions) is amended by adding at the end the following new subparagraph:

'(G) Distributions from retirement plans to individuals called to active duty.'

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to distributions after December 15, 2005.

(c) EFFECTIVE DATE: WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is provided within the time period of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata) or by refund or credit of any overpayment of tax that could be made or allowed if claim therefor is filed before the close of such period.

(3) EFFECTIVE DATE: WAIVER OF PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.

(a) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to section not to apply to certain distributions), as amended by section 901, is amended by striking at the end the following new subparagraph:

'(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.'

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

(4) EFFECTIVE DATE: FOR SERVICE IN A COMBAT ZONE.

(a) IN GENERAL.—Section 72(t)(2)(G) of the Internal Revenue Code of 1986 (relating to service in a combat zone distributee) is amended by redesignating paragraph (7) as paragraph (8).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 608. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEFERRAL PERIODS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (7) the following new paragraph:

'(9) in the case of distributions to which section 72(t)(2)(G) applies.'

(b) EFFECTIVE DATE: WAIVER OF LIMITATIONS.—
the end of the taxable year, no deduction shall be allowed under section 72(e)(11) of such Code (relating to annuities) is amended by redesignating paragraphs (1) through (7) of such section as paragraphs (2) through (8), respectively, and by inserting after paragraph (7) the following new paragraph:

(8) Annuity contracts that are treated as a part of an annuity contract, as described in section 7702(b)(1), are treated as a separate contract for purposes of section 72(e)(11) and section 72(m)(7).

The amendment—

(a) REQUIREMENT OF REPORTING.—For purposes of this section, no deduction shall be allowed under section 72(e)(11) for any annuity contract that is treated as a part of an annuity contract, as described in section 7702(b)(1), except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider that is a part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.

(b) DEDUCTION OF DEATH BENEFIT.—The deduction of any death benefit under section 72(m)(7) is not allowed with respect to any annuity contract if any distribution is made from such contract after the death of the individual eligible for such benefit.

(c) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

(1) COVERAGE TREATED AS CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, if the portion of an annuity contract (whether or not qualified) provided by a rider that is a part of a life insurance contract or an annuity contract is treated as a separate contract, this title shall apply as if the portion of the contract providing such coverage is treated as a separate contract under section 72(m)(7).

(2) CONSEQUENTIAL PROVISIONS.—

(I) In the case of any annuity contract for which the portion of the contract providing such coverage is treated as a separate contract under section 72(m)(7), this section shall apply as if the portion of the contract providing such coverage is a separate contract under section 72(m)(7).

(II) In the case of any annuity contract that is treated as a separate contract under section 72(m)(7), this section shall apply as if the portion of the contract providing such coverage is a separate contract under section 72(m)(7).

(III) In the case of any annuity contract for which the portion of the contract providing such coverage is treated as a separate contract under section 72(m)(7), this section shall apply as if the portion of the contract providing such coverage is a separate contract under section 72(m)(7).

(IV) In the case of any annuity contract for which the portion of the contract providing such coverage is treated as a separate contract under section 72(m)(7), this section shall apply as if the portion of the contract providing such coverage is a separate contract under section 72(m)(7).

(V) In the case of any annuity contract for which the portion of the contract providing such coverage is treated as a separate contract under section 72(m)(7), this section shall apply as if the portion of the contract providing such coverage is a separate contract under section 72(m)(7).

(3) APPLICABILITY OF SECTION 7702.—Section 7702(b)(2) (relating to the premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—

(A) by the sum of any charges (not including any payments) against the life insurance contract’s cash surrender value (within the meaning of section 7702(c)(2)(A)) for coverage under the qualified long-term care insurance contract made on or before such date under the life insurance contract, less

(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).

(4) PORTION DEFINED.—For purposes of this subsection, the term ‘portion’ means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:

(A) A contract described in section 401(a) (which is exempt from tax under section 501(a));

(B) A contract—

(i) purchased by a trust described in subparagraph (A),

(ii) purchased as part of a plan described in section 403(a),

(iii) described in section 403(b),

(iv) provided for employees of a life insurance company under a plan described in section 401(a), or

(v) from an individual retirement account or an individual retirement annuity.

(C) A contract purchased by an employer for the benefit of the employee (or the employee’s spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall be treated as paid under a separate contract to which subparagraph (B)(i) applies.”.

(d) INFORMATION REPORTING.—

(1) Subpart B of part 1 of chapter 1 of such Code (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

“SEC. 6605. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS AND COMBINED ARRANGEMENTS.

(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(m)(7), shall at such time and in such manner as the Secretary shall by regulation prescribe, make a return, in accordance with the regulations prescribed by the Secretary, setting forth—

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.
“(1) the amount of the aggregate of such charges against each such contract for the calendar year,

“(2) the amount of the reduction in the in- vestment plan’s such contract by reason of such charges, and

“(3) the name, address, and TIN of the individ- ual who is the holder of each such con- tract.

“(b) STATEMENTS TO BE FURNISHED TO PER- sons With Respect To Whom Information IS Required.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing

“(1) the name, address, and phone number of the information contact of the person making the payments, and

“(2) the information required to be shown on the return with respect to such indi- vidual.

The written statement required under the preceding sentence shall be furnished to the individual not later than January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(2) TECHNICAL AMENDMENT.—The table of sections for subpart B of part III of sub- chapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

“Sec. 6050U. Charges or payments for quali- fied long-term care insurance contracts under combined ar- rangements.”

e) TREATMENT OF POLICY ACQUISITION ExPENSES.—Subsection (e) of section 68B of such Code (relating to classification of contracts) is amended by adding at the end the following new paragraph:

“(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT AR- RANGEMENTS.—An annuity or life insurance contract which includes a qualified long- term care insurance contract as a part of or a rider on such annuity or life insurance con- tract shall be treated as a specified insurance contract described in subparagraph (A) or (B) of subsection (c)(1).”

(f) TREATMENT AS QUALIFIED ADDITIONAL BENEFIT.—Subparagraph (A) of section 7702(f) of such Code (relating to qualified additional benefits) is amended by striking “or” at the end of clause (iv), by redesignating clause (v) as clause (vi), and by in-serting after clause (vi) the following new clause:

“(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or”

g) EFFECTIVE DATES.—(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after such date.

(2) SUBSECTION (b) —The amendments made by subsection (b) shall apply with respect to exchanges occurring after December 31, 2006.

SEC. 702. DISPOSITION OF UNUSED HEALTH BENEFIT EFFECTS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) In General.—Section 125 of the Inter- nal Revenue Code of 1986 (relating to cafe- teria plans) is amended by redesignating sub- sections (b) and (i) as subsections (i) and (j), respectively, and by inserting after sub- section (g) the following:

“(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

“(1) In General.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrange- ment under which not more than $500 of un- used health benefits may be—

“(A) carried forward to the succeeding plan year of such health flexible spending ar- rangement, or

“(B) to the extent permitted by section 106(b), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the em- ployee.

“(2) HEALTH FLEXIBLE SPENDING ARRANGE- MENT.—For purposes of this subsection, the term ‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 7702(f)) which is a qualified health benefit and only permits reimbursement for expenses for medical care (as defined in sec- tion 213(d)(1), without regard to subpara- graphs (C) and (D) thereof).

“(3) UNUSED HEALTH BENEFITS.—For pur- poses of this subsection, with respect to an employee, the term ‘unused health benefits’ means the excess of—

“(A) the maximum amount of reimburse- ment allowable to the employee for a plan year under a health flexible spending ar- rangement, over

“(B) the actual amount of reimbursement for such year under such arrangement.”

(b) EFFECTIVE DATES.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

SEC. 703. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.

(a) In General.—Section 402 of the Intern- al Revenue Code of 1986 (relating to tax- ability of beneficiary of employees’ trust) is amended by adding at the end the following new paragraph:

“(1) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.—

“(1) IN GENERAL.—In the case of an em- ployee who is an eligible retired public safety- officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible re- tirement plan that the aggregate amount of such distributions does not exceed the amount paid by such employee for health insurance premiums paid for the employee, the employee’s spouse, and dependents, by an accident or health insurance contract which is a part of, or a rider on, an eligible retirement plan to the extent that the aggregate amounts distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums will not be includible if all amounts distributed from all eli- gible retirement plans of an employer shall

(b) RELATED PLANS TREATED AS 1.—All eli- gible retirement plans of an employer shall be treated as a single plan.

c) ELECTION DESCRIBED IN PARAGRAPH (1) —(A) IN GENERAL.—For purposes of para- graph (1), an election is described in this paragraph if the election is made by an em- ployee after separation from service with re- spect to amounts not distributed from an eli- gible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums will not be includible if all amounts distributed from all eli- gible retirement plans of an employer shall be treated as a single plan.

(B) SPECIAL RULE.—A plan shall not be treated as violating the requirements of sec- tion 402, or an engaging in a prohibited trans- action for purposes of section 401(a)(34), merely because it provides for an election with re- spect to amounts that are otherwise distrib- utable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(c) COORDINATION WITH MEDICAL EXPENSE REDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(d) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(1).

(e) CONFORMING AMENDMENTS.—

(C) SPeciAL RULE.—A plan shall not be treated as violating the requirements of sec- tion 402, or an engaging in a prohibited trans- action for purposes of section 401(a)(34), merely because it provides for an election with re- spect to amounts that are otherwise distrib- utable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(f) COORDINATION WITH MEDICAL EXPENSE REDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(g) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(1).

(h) CONFORMING AMENDMENTS.—
H1796

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"(2) Special rule for health and long-term care insurance.—To the extent provided in section 402(l), paragraph (1) shall not apply to amounts distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

"(3) Special rule for health and long-term care insurance.—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this section, as determined by paragraph (7) of subsection (b)."

(c) Effective Date.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 2005.

TITLE VIII

REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000

SEC. 801. REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000.

(a) General Rule.—Section 1 of the Internal Revenue Code (relating to imposition of tax on individuals) is amended by adding at the end the following new subsection:

"(3) Reduction in Benefit of Rate Reduction for Families with Incomes Over $1,000,000.—

(1) In general.—If the adjusted gross income of a taxpayer exceeds the threshold amount, the tax imposed by this section (determined without regard to this subsection) shall be increased by an amount equal to 1.8 percent of so much of the adjusted gross income as exceeds the threshold amount.

(2) Threshold Amount.—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) Special Rule.—For purposes of section 55, the amount of the regular tax shall be determined without regard to this subsection.

(c) Termination.—This subsection shall not apply to taxable years beginning after December 31, 2010.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(c) Section 15 Not to Apply.—The amendment made by subsection (a) shall not be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

Mr. GEORGE MILLER of California (during the reading). Mr. Speaker, I ask the consent that the motion to recommit be considered as read and printed in the RECORD.

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

There was none.

The SPEAKER pro tempore. The gentleman from California is recognized for 5 minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, we offer this motion to recommit a number of issues that are not addressed in the legislation before us and to hopefully not do some of the things that the legislation before us does. We believe that we can do these things without driving employers out of the defined benefit system.

The current bill before us provides a compilation of interest rates and premium fees and costs that we believe will dramatically accelerate the termination and freezing of these plans. That is not because we say it; that is what the employers have told one another in their associations, the expectation that some 60 percent of the employers will freeze or terminate their plans.

We believe that our motion to recommit does not impose arbitrary benefit cuts and freezes on workers who do not control whether or not the employers fund the pension plans or not.

The motion to recommit would require companies to seek alternatives to the termination and prove that a plan is in fact unaffordable before they can cast it away in bankruptcy, as we saw with the United Airlines, and that the costs of the employees billions of dollars in pension benefits.

Importantly, the motion to recommit would actually help the employees of American, Continental, Delta and Northwest whose pension plans are in danger of being terminated. The bill before us does not do that. It talks about doing that in the future.

The motion to recommit would also protect 9 million workers who are covered by multi-employer pension plans in the construction, food service and transportation industries. We would ensure that workers and executives would be affected equally in pension plans. Again, the horrible demonstration out of United Airlines, as the executives walked away with $235 million, former and current employees, do that cost the employees billions of dollars in pension benefits.

One thing this legislation will do, if it is not corrected, we are going to have other problems in addition to the airline industry. So it deals with those problems.

This is a responsible motion, and I urge my colleagues to support it.

Mr. BOEHNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. LATHAM). The gentleman is recognized for 5 minutes.

Mr. BOEHNER. Mr. Speaker, the debate today on the floor is about the massive underfunding in worker pensions and the need to change the status quo. Unfortunately, what we have just been presented is what would actually make pensions less secure by preserving the status quo and putting at risk millions of American pensions.

Let me make five points. First, the motion to recommit preserves the status quo by requiring employers and union leaders to fund their plans at 90 percent or in some cases only 80 percent, instead of the 100 percent funding requirements that we have in the underlying bill. It just does not pass the straight-face test.

Second, they are preserving the status quo by continuing to allow employers to take up to 30 years to erase any funding shortfall in their plan. Pension experts agree that this increases the risk of plan termination, threatening the benefits of workers and retirees.

Third, they are preserving the status quo on unrestricted use of credit balances which mask the massive pension

I listened to a lot of my colleagues talk in favor of this bill, telling me things they do not particularly like about it, things that will be, they hope, corrected in conference, and now we have a motion to recommit that does exactly that.

So if we are sincere in wanting to move the process forward so that we can get to conference, let us speak to what we want to get from the conference report. Let me make it clear that the rule did not permit us to offer this directly as a substitute, the only way we can do it is by the motion to recommit.

But it does contain the issues that many have talked about. It has the good without the bad. It has the provisions for the defined contributions, so that we can deal with the 401(k)s and the IRAs and the savers credits and automatic enrollments and those provisions that are important. But it also deals with the issue of the airline industry, which, if we do not correct, we are going to have other problems in addition to the airline industry.

So it deals with those problems.

Number one, it does one thing. Mr. Speaker, that is critically important: It takes away the additional deficit that this bill would create. This bill will add an additional $14 billion to the deficit of this country. The substitute preserves the cost of the legislation so that we do not add to the growing problem of the deficit of this Nation.
plan underfunding we see today. We know that the credit balance rules that are in place today are irresponsible public policy. They must be changed if we are going to strengthen the pension system. And to allow those rules to stay in place, again, does not pass the straight-on-Face test.

Fourth, they propose preserving the status quo by failing to incorporate the full package of multi-employer reforms that were agreed to by a broad coalition of organized labor and employer groups. Last, they preserve the status quo by promoting uncertainty among employers if these pension benefits and workers who are relying on them maintain the current interest rate package for 2 years and then go back to the 30-year rate thereafter.

The modified yield curve in the underlying bill presents a more accurate picture of the liabilities that these plans have and should, in fact, stay in the book.

Mr. Speaker, I believe that the underlying bill is far more balanced. It really does strengthen American pensions, and I would urge my colleagues to reject this.

I yield to the gentleman from Michigan.

Mr. MATTIE. Mr. Speaker. I thank the distinguished chairman for yielding the floor.

The motion to recommit also has a straight-face test.

I support the motion to recommit, a yeas 294, nays 132, aye 200, nay 132, aye 200, nay 132.

The vote was taken by electronic device, and there were—yeas 200, nays 227, not voting 6, as follows:

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

### PERSONAL EXPLANATION

Mr. PICKERING. Mr. Speaker, on rollcall Nos. 634 and 635, I was unadvisedly detained. I would have voted "nay" on recommittal and "aye" on passage.

### MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.
EXPRESSING SENSE OF THE HOUSE THAT SYMBOLS AND TRADITIONS OF CHRISTMAS SHOULD BE PROTECTED

The SPEAKER pro tempore (Mr. LATHAM). The unfinished business is the question of suspending the rules and agreeing to the resolution. H. Res. 579, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and agree to the resolution, H. Res. 579, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote. The vote was taken by electronic device, and there were—yeas 401, nays 22, answered "present" 5, not voting 5 as follows:

[Roll No. 637]

YEAS—401

Abercrombie (HI)                  Chabot (OH)                  Gallegly (CA)                  Baca (CA)                  T. Beard (OH)
Achenbach (CA)                     Chakotay (MI)                  Gallegly (NJ)                  Bachus (ID)                  Bane (NY)
Allen (GA)                         Cheney (WA)                   Garamendi (CA)                  Baldwin (CA)                  Barr (NY)
Andrews (MD)                       Cheney (CT)                    Garamendi (CA)                  Ballenger (VA)                 Barr (CO)
Baca (CA)                          Churchill (FL)                 Garamendi (CA)                  Baliles (VA)                   Barrow (GA)
Baird (WA)                         Cohn (OH)                      Garwood (NJ)                    Bandy (NC)                    Barrow (CT)
Ball (TX)                          Collins (GA)                   Gates (NY)                      Barker (MD)                    Barney (CT)
Barrett (NY)                       Connolly (MA)                   Gates (CA)                      Barkley (AL)                   Barrow (WI)
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Bass (GA)                          Corcoran (FL)                   Geer (CA)                       Bash (NY)                      Bartow (AL)
Bauer (CA)                         Corzine (NJ)                   Gehl (IL)                       Bauman (CA)                    Bass (NY)
Beauprez (CO)                      Cuellar (TX)                    Gehl (WI)                       Benefield (GA)                 Bass (SC)
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Berman (CA)                        Cummings (TX)                  Gephardt (MO)                   Benefield (GA)                 Bass (LA)
Berturck (IL)                      Cummings (TX)                  Geer (NM)                       Benefield (GA)                 Bass (LA)
Bilirakis (FL)                     Cummings (TX)                  Geer (NM)                       Benefield (GA)                 Bass (LA)
Blackburn (GA)                     Cummings (TX)                  Geer (NM)                       Benefield (GA)                 Bass (LA)
Blanchfield (GA)                   Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Bonilla (LA)                       Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Boehner (OH)                       Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Boehlert (MD)                      Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Bono (PA)                          Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Boozman (TX)                       Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Boyle (FL)                         Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Bradby (CA)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Bradford (CA)                      Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Brown (CA)                         Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
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Brown (NC)                         Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Brown (WV)                         Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Brown-Waite (CT)                   Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Burgess (TX)                       Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Burton (IN)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Butterfield (NC)                   Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Buyer (NJ)                         Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Calvert (CA)                       Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Campbell (CA)                      Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Cannon (TX)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Cantor (NY)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Capito (WV)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Capp (WY)                          Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Cappa (FL)                         Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Card (NV)                          Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Cardoza (CA)                       Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Carnahan (CO)                      Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Carson (CA)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Carter (OK)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)
Castle (CA)                        Cummings (TX)                  Gerlach (NV)                    Benefield (GA)                 Bass (LA)

NAYS—22

Abercrombie (HI)                  Ackerman (MI)                   Napolitano (AZ)                  Yarmuth (KY)
Achenbach (CA)                     Ackerman (OH)                   Neel (GA)                       Young (GA)
Allen (GA)                         Ackerman (MI)                   McKeon (CA)                     Young (GA)
Andrews (MD)                       Ackerman (MI)                   McCollum (NY)                   Young (GA)
Baca (CA)                          Ackerman (MI)                   McMillen (PA)                   Young (GA)
Baird (WA)                         Ackerman (MI)                   McNerney (CA)                   Young (GA)
Ball (TX)                          Ackerman (MI)                   Mica (FL)                       Young (GA)
Barton (TX)                        Ackerman (MI)                   Milbank (CA)                     Young (GA)
Bass (GA)                          Ackerman (MI)                   Mitchell (SC)                    Young (GA)
Bauer (CA)                         Ackerman (MI)                   Mollohan (MD)                    Young (GA)
Beauprez (CO)                      Ackerman (MI)                   Mooney (RI)                      Young (GA)
Becerra (CA)                       Ackerman (MI)                   Moore (WV)                      Young (GA)
Berman (CA)                        Ackerman (MI)                   Moreno (CA)                      Young (GA)
Berturck (IL)                      Ackerman (MI)                   Nussle (SD)                      Young (GA)
Bilirakis (FL)                     Ackerman (MI)                   Oberstar (MN)                   Young (GA)
Blackburn (GA)                     Ackerman (MI)                   Olver (CO)                       Young (GA)
Blanchfield (GA)                   Ackerman (MI)                   Obey (TN)                        Young (GA)
Bonilla (LA)                       Ackerman (MI)                   Obey (TN)                        Young (GA)
Boehner (OH)                       Ackerman (MI)                   Olver (CO)                       Young (GA)
Boehlert (MD)                      Ackerman (MI)                   Olver (CO)                       Young (GA)
Bono (PA)                          Ackerman (MI)                   Peters (CA)                      Young (GA)
Boozman (TX)                       Ackerman (MI)                   Peters (MN)                      Young (GA)
Boyle (FL)                         Ackerman (MI)                   Pelosi (CA)                      Young (GA)
Bradby (CA)                        Ackerman (MI)                   Pelosi (NY)                      Young (GA)
Bradford (CA)                      Ackerman (MI)                   Peterson (WI)                    Young (GA)
Brown (CA)                         Ackerman (MI)                   Petri (WI)                       Young (GA)
Brown (MN)                         Ackerman (MI)                   Pitt (GA)                        Young (GA)
Brown (NC)                         Ackerman (MI)                   Platts (NY)                      Young (GA)
Brown (WV)                         Ackerman (MI)                   Poe (GA)                         Young (GA)
Brown-Waite (CT)                   Ackerman (MI)                   Pomerozy (NJ)                    Young (GA)
Burgess (TX)                       Ackerman (MI)                   Portman (OH)                     Young (GA)
Burton (IN)                        Ackerman (MI)                   Rogers (TX)                      Young (GA)
Butterfield (NC)                   Ackerman (MI)                   Rogers (AL)                      Young (GA)
Buyer (NJ)                         Ackerman (MI)                   Rogers (AR)                      Young (GA)
Calvert (CA)                       Ackerman (MI)                   Rogers (FL)                      Young (GA)
Campbell (CA)                      Ackerman (MI)                   Rogers (IL)                      Young (GA)
Cannon (TX)                        Ackerman (MI)                   Rogers (OK)                      Young (GA)
Cantor (NY)                        Ackerman (MI)                   Rogers (VA)                      Young (GA)
Capito (WV)                        Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Capp (WY)                          Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Cappa (FL)                         Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Card (NV)                          Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Cardoza (CA)                       Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Carnahan (CO)                      Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Carson (CA)                        Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Carter (OK)                        Ackerman (MI)                   Rohrabacher (CA)                Young (GA)
Castle (CA)                        Ackerman (MI)                   Rohrabacher (CA)                Young (GA)

THE SPEAKER pro tempore (Mr. LATHAM). The unanimous consent is agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The vote was taken by electronic device, and there were—yeas 401, nays 22, answered "present" 5, not voting 5 as follows:

[Roll No. 637]
So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the resolution was amended so as to read: “Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected for those who celebrate Christmas.”

A motion to reconsider was laid on the table.

URGING OBSERVANCE OF AMERICAN JEWISH HISTORY MONTH

The SPEAKER pro tempore (Mr. BASS). The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 315.

Mr. GINGRICH moved to agree to the concurrent resolution, H. Con. Res. 315, on the yeas and nays.

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

BORDER, PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 610 and rule XVIII, the Chair directs the House on the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4437.

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4437 to be considered shortly.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

CONGRESSIONAL RECORD — HOUSE

December 15, 2005

NOT VOTING—10

Davis (FL) Gonzales Tierney

Deal (GA) Herper Waters

Diaz-Balart, M. Hunter Emanuel

Enmanuel Hyde

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.
Mr. Chairman, I rise in strong support of H.R. 4437, the Border Security, Antiterorrism, and Illegal Immigration Control Act of 2005.

Mr. Chairman, our Nation has lost control of its borders, which has resulted in an increase in illegal immigration and has left us vulnerable to infiltration by terrorists and criminals. Estimates indicate that there are currently more than 10 million illegal aliens already here, and that population continues to grow by an estimated half million additional aliens each year.

Large majorities of Americans support efforts to restore the security of our Nation’s borders and to assure accountability of those who illegally enter the United States. America is a compassionate Nation that welcomes legal immigrants from all corners of the world. But it is also a Nation of laws. These concepts are not mutually exclusive, and H.R. 4437 reflects this.

The bill, which I introduced with Homeland Security Committee Chairman KING, will diminish the lure of higher-wage employment that drives illegal entry into the United States while enhancing border security. This legislation establishes respect for our laws by holding violators accountable, including human smugglers, employers who hire illegal aliens, and alien gang members who terrorize communities throughout the country.

I am pleased that this bill incorporates vital border security provisions from legislation reported by the Committee on Homeland Security and congratulate Chairman KING for his committee’s important role in drafting this component of the bill.

H.R. 4437 will deliver on the unkept promise of the Immigration Reform and Control Act of 1986 by providing employers with a reliable method of determining whether their employees are eligible to work. The bill expands on the premise of Representative Calvert’s legislation, H.R. 19, to build upon a successful pilot program that currently enables employers to verify the employment eligibility of their workers. Currently, employer participation in this program is on a voluntary basis. Within 2 years, this bill provides that all employers must check new hires against this database.

The bill also increases penalties for aliens, those who suffer most from alien smuggling are often the most vulnerable and desperate, entering the country in perilous conditions that sometimes result in injury or even death.

Moreover, debts owed to alien smugglers by those transported into the country illegally often create a form of slavery by those transported into the country in perilous conditions that sometimes result in injury or even death.

The legislation also increases penalties for previously deported aliens who illegally re-enter the United States. These provisions are incorporated from H.R. 3156, the Criminal Alien Accountability Act, introduced by the gentleman from California (Mr. Issa).

Another crucial provision of the legislation remedies the current situation in which the Department of Homeland Security is required to release dangerous alien criminals who cannot be deported. This has compelled the release of nearly 1,000 criminal aliens, including murderers and rapists, onto our streets. This legislation corrects that. The law requires that aliens deported under this authority be released only in cases where there is no evidence that they will reoffend.

The bill also contains commonsense provisions that would bar aliens who are terrorists or security risks from being naturalized U.S. citizens, making aggravated felonies inadmissible to the United States, and facilitate the deportation of aliens who sexually abuse minors.

Mr. Chairman, this legislation represents a critical step in helping to regain control of our borders and to prevent illegal immigration. I urge my colleagues to support this important bill.

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

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Ladies and gentlemen, let me say from the outset that we on this side, the Democrats, believe that a strong border security policy is an absolute necessity for this Nation. We must ensure that terrorists cannot lurk in the shadows of our society and do us harm. Let us begin with that.

Now, if you will look at the dissenting views in our report on this measure, there may be 20 to 40 different reasons that we do not like the bill. So rather than take all that time up, what I want to talk about is the one that offends me the most, and that is the criminalizing of unlawful presence. Now, this, alone, should turn away a majority of the House. There are roughly 11 million undocumented individuals in the United States who, under sections 202 and 211 of this bill, would suddenly be unable to apply for earned legalization. This is the only rationale that I can bring to you today, my colleagues. The President of the United States, who I seldom quote, has said that without a comprehensive approach that includes earned legalization, we will not solve the problem. Otherwise, these millions will remain in this country, in the shadows; and we will not know what they are doing and who they are and where they are going.

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

Mr. SENSENBSRINNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, the gentleman from Michigan, I think, has exposed what the difference is between those who are for this bill and those who are against this bill.

Earned legalization is a nice word for amnesty for illegal aliens. The American public is against amnesty for illegal aliens. This bill does not give amnesty to illegal aliens, and it should not because it rewards somebody for breaking our laws.

Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, the American people know the difference between legal immigration, which has made our country great, and illegal immigration, which threatens our homeland security.

This legislation represents a crucial step forward in securing our borders and protecting the lives and property of the American people. Sponsored by Chairman SENSENBSRINNER and Chairman KING, the Border Protection, Antiterorrism, and Illegal Immigration Control Act of 2005 achieves four essential goals.
It combats illegal immigrant smuggling and makes it easier to deport illegal aliens, 20 percent of all Federal prisoners, who have committed crimes. This will make our communities much safer. This legislation makes it easier to apprehend, convict and deport potentially dangerous illegal aliens. It allows law enforcement officials to determine whether a job applicant is legally in the United States. Last year, not a single employer was fined for illegally hiring someone. If we do not diminish the magnet of jobs, no amount of border fencing, no amount of laws alone will prevent illegal immigration. Lastly, Mr. Chairman, this initiative will result in more individuals being held accountable for breaking our immigration laws.

Our hearts go out to those who want to come to this country. We are the freest, most prosperous nation in the world. It is no surprise that America welcomes more legal immigrants than all other countries combined. But no nation can protect its residents without knowing who is entering and why. Thousands of people continue to cross our borders illegally every day instead of playing by the rules and coming into the country the right way. No Congress can authorize the rounding up 10 to 20 million illegal immigrants, no one really knows how many, for mass deportation. But if we enforce our laws, many either will leave voluntarily or decide not to enter illegally. Perhaps the time will come for a limited foreign worker program, but that is only after we have secured our borders and put the interests of American workers first.

Immigration is an emotional, sensitive, complex subject. But Americans, citizens and legal immigrants alike, have every right to secure borders in a safe homeland. And it is time we turned that right into reality. Mr. Chairman, Chairman SENSENBRENNER and Chairman King deserve much credit and the thanks of the American people for bringing this legislation to the House floor.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from California (Ms. LOFGREN), a distinguished member of the Judiciary Committee, the head of the California Democratic delegation.

Ms. LOFGREN of California. Mr. Chairman, every country has the right, even to control who enters and exists its borders, and that includes the United States of America. Since 9/11, as many have mentioned, that obligation has taken on increased importance and significance, and all of us believe that we need to do a better job. The truth is that the bill before us today really does not do that better job.

We all watch TV, and we see the extravagant comments made, and some of them turn out to be correct. There is something called 'catch and release.' And it is, in fact, individuals who are apprehended as they unlawfully enter the United States are cited and released with the promise that they will appear. It turns out that over 80 percent of the people who promise to appear do not show up. Now, when I was in local government, we had a failure-to-appear rate in single digits. We were alarmed at that. But even though the administration has seen this rate, they have not done anything. Does this bill order the administration to go out and find those people that fail to appear and bring them in for processing to be deported or whatever the law requires? No, it does not.

When we come into a country, we would have individuals who were undocumented, without papers, who committed a crime, and they would be in our jail. And every week, the Immigration Service would come, and they would take those people away from our jail after their sentences were served, and they would deport them, which we thought was a pretty good deal. Recently, the bill has been dropped on that score. And so we have got people who committed crimes, who should be deported, and they are not being deported. And sometimes they are being released from jail. Does this bill tell the administration to go out and find those people and bring them in, ready to be deported, as the law provides? No, it does not. Does it order the administration to enhance its efforts so that criminals who are in jails who are supposed to be brought in for deportation are brought in? No, it does not do that either. It does not increase the resources. And it does some things that I think are quite weird and unfortunate. I am a member of the Homeland Security Committee as well as the Judiciary Committee, and I have mentioned section 404 in both committees. Section 404 allows for the exclusion of legal residents if they were born in the following countries: China, Vietnam, Cuba, Ethiopia, India, Eritrea or Laos. Why is that? Those countries refuse to accept or unwillingly display the acceptance of people whom we deport. The answer is not to exclude legal residents who were born in those countries.

I thank the gentleman for yielding me this time, and I will have further comments as the day proceeds.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Ms. LOFGREN of California. I yield 4 minutes to the gentleman from Michigan (Mr. CONYERS). Mr. Chairman, could we begin this discussion amongst ourselves by distinguishing between earned legalization and amnesty? Earned legalization is not a free lunch. Those working under this program will have to work for years in the United States to gain citizenship. They are here. They work. They pay taxes. They raise their families. And that is one legitimate plan.

What does someone have here for an alternative? The bill before us does nothing about the 11 million people who are already here. And, by the way, is the President of the United States supporting an amnesty program? I do not think so.

I thank the gentleman for yielding to me.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. LUNGREN).

Mr. LUNGREN of California. Mr. Chairman, one of the primary attributes of a sovereign nation is the ability to control its own borders. In this regard, it is clear that the Constitution, article I, section 8, places this duty right here, in the Congress. We have thus arrived at that moment of decision where the American people have a legitimate expectation that we will rise to this fundamental responsibility of governance.

As one who has had the opportunity to participate in the drafting process of this legislation in both of the committees of primary jurisdiction, I would be the first to acknowledge that this was not an immaculate conception. It retains my belief that a comprehensive approach to the issue is necessary if we are to enhance the openness of our resources on the border.

However, it is critical that we have to take a first step. This bill should be judged on the basis of what it does contain, not for what it does not contain. On its own merits, this is a good bill. It is a good first step towards regaining control of our borders. And, furthermore, we have the assurances of the chairman of the Judiciary Committee that other aspects of the larger immigration issue will be considered after our return. The decision has been made to begin the process of reform of the border security bill. Why? Because that is what the American people expect of us. Even if it is not a Rembrandt, it is not a Rembrandt.
undermined the employer sanctions provision of the bill. It did not have to happen that way. Congressman HALL of Texas offered a verification system somewhat like that contained in the bill before us. However, at that time I did not believe, nor did others in this body, that we had the technology to make it work. However, today, we do. It is incumbent upon us that we must learn from the past and have a reliable system of employment verification if employers are to work. A workable employment verification system is the critical linchpin in devising a strategy to demagnetize the attraction of unlawful employment. These and other things are in this bill. This is a good first step. Let us not fall on our own swords in an effort to try to say we want a perfect bill. If we do not do this, we will not do anything.

Mr. CONyers. Mr. Chairman I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), ranking member of the Subcommittee on Immigration and member of the House Judiciary Committee.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the chairman very much for yielding me this time.

And might I thank Mr. SENSENBRENNER because, as I said in the Rules Committee, I believe, between the ranking chairman of the Judiciary Committee and certainly the chairman and ranking member of the Homeland Security Committee, there are a lot of good intentions. But, frankly, I think it is overwhelming to expect that, in this short period of time, that we can answer all of the concerns of the American people and answer the question of 20 years of shortsighted enforcement-only legislation to address this question of the enormity of illegal and undocumented individuals but, in particular, to address the question of security. Underpinning enforcement of this border security bill, and that is where I believe that we have a number of failures.

The American people have polled repeatedly on one concept. That is whether or not they consider the immigration question a crisis worthy of our attention. But when they are asked about solutions, they specifically suggest the idea of comprehensive immigration enforcement. Strong enforcement at the border, which many legislative initiatives offered by KOLBE and GUTIERREZ, offered by members of the Homeland Security Committee, offered in Judiciary, offered by H.R. 4044, the Rapid Border Protection Act, all had reasonable responses, enforcement and earned access to immigration.

But allow me to tell my colleagues why this particular bill is going to fail on its own weight and, as I heard someone say, the wheels are going to fall off, unless we turn back the bill and work together.

It is important to note that as we stand here on the floor today, there are members of the United States military on the frontlines of Iraq and Afghanistan whose family members are undocumented. We have a program that allows many of us supported by those who are the frontlines of Iraq to become documented, legal permanent residents. In fact, we heard a story of a young man who was killed on his way to get fingerprinted, tragically. But it allows them to be able to document themselves and access legalization for their family members.

While they are on the frontlines of Iraq, the very presence of their grandmother, their mother, their sister or their father will allow them to be incarcerated as a felon under this bill, will allow them to be detained under this bill. And then you want to ask the employers of America, who I believe should be responsible for who they hire, not least of the civil question, may question, and that means that they will think that anyone with a name that sounds unlike American should be verified.

That will be close to 146 million persons who are currently employed and then 51 million persons who are eligible for employment. The basic pilot program will fall on its own weight. Why? Because the technology is not yet able to document and detail whether one name that has a particular sounding name is equal to the other name. Our technology does not equal that kind of competence at this point. And we have not answered the question of the funding because we require mandatory detention. The question is what kind of resources will be utilized. There are many elements to this bill that we could find common ground on, and there are very important aspects. I believe there should be more in there to provide for our Border Patrol agents, the equipment, the night goggles, the computers that we have been saying they need over and over again, the helicopters, power boats and training. But that, unfortunately, was not allowed in this legislation.

So, Mr. Chairman, as I conclude, might I thank those who have done the heavy lifting, might I thank the work of that need be done on behalf of all immigrants or individuals that may be undocumented. I value the fact that we as a Congress have been charged with the responsibility of securing America. Criminalizing undocumented workers and restaurant workers does not do the job. Let us turn this bill back so that we will have an opportunity to work in a bipartisan manner.

I rise in support of my Rapid Response Border Protection Amendment, H.R. 4044 to the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, and against the underlying bill as it is presently drafted.

H.R. 4437 has a substantial number of provisions that would increase border security, but it is lacking in one very important respect. It does not provide the Border Patrol with the equipment and resources that it needs to secure the border. My amendment would add additional resources.

For instance, aircraft and watercraft are invaluable tools for spotting people illegally crossing our borders and for assisting in their apprehension. They also are essential for rescue operations when people crossing the border need emergency assistance. The Secretary of the Homeland Security would be required to increase the number of Border Patrol helicopters by at least 100 and to increase the number of Border Patrol powerboats by at least 250.

The Border Patrol currently suffers from a severe shortage of serviceable, police-type vehicles. In many locations, agents have to wait for vehicles to be brought in from the field by other agents on the previous shift before they can begin their duties. The Secretary would be required to establish a fleet of such motor vehicles at one vehicle per three Border Patrol agents.

The lack of portable computers precludes Border Patrol agents from utilizing biometric databases in the field. This results in inadequate checks being performed before suspects are released. The Secretary would be required to ensure that each police-type motor vehicle in the Border Patrol’s fleet is equipped with a portable computer with access to all necessary law enforcement databases.

Smugglers and other criminals historically have used the cover of darkness to cross our borders. Although technology that enables the user to see at night has been available for many years, it is not readily available to all of the Border Patrol agents, and the Border Patrol is one of the few law enforcement agencies that conducts most of its operations in remote areas during the hours of darkness. The Secretary would be required to ensure that sufficient quantities of state-of-the-art night vision equipment are provided for every Border Patrol agent who works during the hours of darkness.

Body armor is a relatively inexpensive piece of protective equipment that has saved the lives of countless law enforcement officers. The Secretary would be required to ensure that every Border Patrol agent is issued high-quality body armor that is appropriate for the climate and risks faced by the individual officers.

Currently, fewer than 11,000 Border Patrol agents are responsible for patrolling more than 8,000 miles of land and coastal borders. Because of the need to provide continuous, around-the-clock coverage, no more than 25 percent of those agents are securing our borders at any given time. That averages one Border Patrol agent every 3 miles. A substantial increase in personnel is desperately needed. The Secretary would be required to hire an additional 10,000 Border Patrol agents.

Recruitment and retention problems make it difficult to maintain a large force of experienced Border Patrol agents. One of the key difficulties in this regard is the fact that the pay lags behind that of many other law enforcement officers. The amendment would address this problem by requiring the Secretary to raise the base pay for all journey-level Border Patrol agents to a GS–13 level.
Nonimmigrant S visas are available for aliens who assist the Government with the investigation or prosecution of a criminal organization or a terrorist organization. The amendment would establish a third category for aliens who assist the United States Government with the investigation or prosecution of criminal alien smuggling organization or an organization engaged in the sale or production of fraudulent documents to be used for entering or remaining in the United States unlawfully. A protection program would be available if needed.

Those who object to the cost of H.R. 4044 need to recall the enormous costs, not just in monetary terms, of the last terrorist attacks. If we want to prevent another terrorist attack on American soil, we must be prepared to devote whatever resources are necessary to keeping terrorists out of our country.

I urge you to vote for this amendment.

Mr. PENCE. Mr. Chairman, I yield 5 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. I thank the distinguished gentleman from Wisconsin for yielding me time and for his extraordinary leadership of the Judiciary Committee on which I serve. I also congratulate Chairman KING for his hard work on this important legislation.

As the grandson of an Irish immigrant, I believe in the ideals that are enshrined on the Statue of Liberty in New York Harbor. America has always and will always be a welcoming Nation, welcoming under the law any and all with the courage enough to come to America, a place where they can live and be able to join all of us doing our work, welcoming under the law any and all with the courage enough to come to America, a place where they can live and be able to join all of us doing our work.

We have before us today an important first step in securing America's borders and stopping the flow of illegal immigrants into our Nation. I rise again in strong support of the Border Protection, Antiterroism, and Illegal Immigration Control Act of 2005. With gratitude for its authors, I urge its passage.

Mr. CONYERS. Mr. Chairman, I yield 5½ minutes to the gentleman from Illinois (Mr. GUTIERREZ), the one gentleman not on the Judiciary Committee that has worked with us all year long on this subject matter, who has done noble work for his caucus and for the committee.

Mr. GUTIERREZ. Mr. Chairman, I thank the chairman very much for all of his hard work.

Mr. Chairman, I guess I come to speak before this very, very able body today to say that we are really not solving the problem. The fact is that this bill represents a retreat from true immigration reform and from true security. Evaluate the bill, and you will see that it neither demonstrates the political will nor commits the requisite resources to deport 11 million people who currently live and work in the United States of America.

So after the bill is passed, there will still be 11 million, and I do not see anything in the bill that is going to cure that problem; 11 million people who we should, as President Bush has urged, as all like-minded people have urged, should be given the opportunity to come out of the shadows of darkness, should come out of the marginalized position in which they live and be able to join all of us doing three things: demonstrating their good moral character; demonstrating that they pay taxes; demonstrating that they work and they contribute to this great country of ours.

The bill does not do anything. It is silent. Eleven million people. Are we going to go out and arrest and detain those 11 million people? Nobody would argue that that is what we are going to do, because we have never demonstrated the political will to do that, nor have we ever committed the requisite resources. So in the absence of that, if you truly want security here, I suggest that we should get their fingerprints; that we should have them come out of the darkness and give us their fingerprints; give us their bank accounts; give us their addresses and become full-fledged members of our society.

I am not saying put them at the head of the line. Put them at the back of the line. Let us see what that truly is. They do not come out of the shadows clean. That is what it is, according to our statute. You cannot retroactively make it a criminal offense. It is a civil offense, and let us deal with the civil offense that they have committed.

If that is not true, what offenses have we never committed? Please tell me. These 11 million people have never committed a criminal offense. They have not violated an immigration law; not violated a criminal law. They have not committed a criminal offense; they have not violated an immigration law. How can we deport those 11 million people, multiply that by 8 or 10 times, and do that?

This year alone, some 115,000 illegal aliens from countries other than Mexico have been apprehended by our Border Patrol; and simply as an ordinary American, I share this concern. That is why I support the legislation before us today.

Estimates vary, but it is generally accepted that around 11 million illegal aliens are living in our Nation today. The presence of these people serves to undermine America by making an illegal border crossing. We cannot allow this trend to continue.

In today's legislation, the Department of Homeland Security is required to develop and submit to Congress a comprehensive strategy for securing the border, including surveillance plans, a timeline for implementation, 1,000 additional port of entry inspection personnel, 1,500 additional canine units and beyond.

Also, importantly, this legislation takes a giant step towards ending the current practice of what is known as "catch and release." That plagues the borders. It requires mandatory detention of illegal border crossers until an immigration removal hearing can be held. As part of a well-developed strategy, the bill mandates that Homeland Security use every available detention bed and authorizes new detention space.

Finally, this bill addresses the need to enforce our employment laws by instituting an employer verification system whereby employers will be required to submit information to the Department of Homeland Security and the Social Security Administration for verification. Providing this verification system will ensure that only Americans and legal visitors to the United States of America are living and working in our Nation.

We have before us today an important first step in securing America's borders and stopping the flow of illegal immigrants into our Nation. I rise again in strong support of the Border Protection, Antiterroism, and Illegal Immigration Control Act of 2005. With gratitude for its authors, I urge its passage.
It is critical and essential to our economy for their being here in the United States of America. So let us stop it. Let us put an end to it. I would say to all of my colleagues here today, if you are selling drugs, if you are a rapist, if you are a robber, if you are a person of ill repute, I and the colleagues I know would be the first to stand up and to say, Out with you and back to your country of origin, if that is what you have come here to do.

But let us be honest. The immense majority of them are hardworking. The immense majority of them are people we know that are hardworking, tax-paying, good moral character people who want to do nothing more than pay their bills and be good citizens or legal immigrants who want to be part of this great economy. And of course, the majority of them are hardworking. The country of origin, if that is what you know would be the first to stand up and to say, They are not people who want to do nothing more than be among us and try to do the right thing. The reason those 11 million people who are here today are not here legally is because we have not been able to make a system that works, that encourages the mass illegal immigration America is experiencing today.

Not only would this system strike a blow against document fraud; it would also reduce identity theft, a practice on the rise in the United States. Just like credit card companies can flag unusual purchases to stop identity theft, this program would flag unusual behavior. This is a good program, and this bill must pass.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ), one of our dedicated members on the Judiciary Committee and a leader in the Hispanic Caucus.

Ms. LINDA T. SÁNCHEZ of California. Mr. Chairman, I thank the gentleman from Michigan for yielding me this 3 minutes.

Mr. Chairman, I rise today in strong opposition to H.R. 4437. Americans are right to demand better border security and better enforcement of our immigration laws, but this bill is just a false sense of security. It does not secure our borders, it leaves our ports of entry exposed, and does nothing to reform our broken immigration system. What is needed is enforcement of laws that work, and we cannot have this without comprehensive immigration reform.

Mr. Chairman. I agree with this. Even President Bush agreed on this.

We should not be debating a bill thrown together at the 11th hour before we adjourn for recess, a bill that basically opens the door for witch hunts of anyone who looks foreign and a bill that erodes basic civil liberties and human rights for migrants, legal immigrants, and even citizens.

In looking at the lack of merit in this bill, we need to ask ourselves what kind of America do we want to live in. Do we want an America where people have mass deportations? Do we want an America where police officers can randomly ask foreign-looking Americans to produce identification to prove their legal status? Do we want an America where people can be detained for life when their home country is unwilling to take them back? Do we want an America where American citizens will have to carry national identification cards to travel, work, or just walk down the street? Do we want an America that criminalizes 1.6 million children? Because that is exactly what this bill will do.

As the daughter of immigrants, I am offended by this bill, and I urge my colleagues to think long and hard about the vote they are about to cast and the detrimental impact it will have on the proud tradition of immigration that this country was built on.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN) who is an emeritus member of the Judiciary Committee.

Mrs. BLACKBURN. Mr. Chairman, I thank Chairman SENSENBRENNER and Chairman KING of New York for their extraordinary efforts on this bill. I do not support H.R. 4437.

We do have a crisis on our hands, and it is time that we do something about it other than talk. The chairmen have done a great job in bringing this forward. Everywhere I go in my district, Democrats, Republicans, everyone is united in the belief that our border enforcement is out of control and we have to give our border agents the tools they need to protect this great Nation.

My constituents see this truly as an issue of national security and of grave importance to our country. It is one we cannot wait to handle. We have to do something to secure these borders.

I am especially pleased to see that the Judiciary Committee has inserted several items on this bill that I had worked on while I was a member of the committee. During the 108 and 109th Congress, I introduced the Federal Contractor Security Act to tackle the problem of illegal entrants working for Federal contractors at critical infrastructure sites, at sites that are sensitive to our national security. And now the bill makes it mandatory for all employers, including Federal contractors, to use the worker verification system.

This is a system that employers can use at no charge, at no charge, and provide the sense of security that is needed by American citizens that the individuals working are indeed who they claim to be.

The legislation removes the guesswork about a worker's status and separates illegal entrants well before a business has invested time and money to train them.

As I mentioned, I want to thank Chairman SENSENBRENNER and Chairman King of New York. I want to thank the leadership for their work and encourage support of H.R. 4437. This is something that is good for business. It is good for our Nation's security.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. FAIR). (Mr. FAIR asked and was given permission to revise and extend his remarks.)

Mr. FAIR. Mr. Chairman, I rise in opposition to this very poorly drafted bill. I learned long ago in my legislative career that you should not enact laws that you cannot enforce. This bill has some good provisions, but it also has a lot of bad provisions.

If there was ever a moment, I think, in legislative history of congressional hypocrisy, it has got to be right now. Just a few minutes ago we voted to recognize and support the symbols of Christmas. This bill steps on the spirit of Christmas for 11 million people in America who are now being given a Christmas present, being told they are
“criminals.” Not only are all the undocumented people made instant criminals, so are their churches, so are their neighbors, and so are the people that support them and employ them.

Mr. Chairman, this bill declares war mostly on Mexico because it is the home of the majority of undocumented people in the United States. They are people that are already here, working, living in our communities. Who are these people? They may be your town heroes. They may be the latest valedictory or valedictorian in school. They might have been the star of your football team or other sports team. They may have been the next scholarship winners. They may be some of America’s brightest, our future. And yet now, by caveat, they are criminals.

Some cut your lawn, some clean your house, some harvest your food and that is the food that we pray over. This bill makes criminals out of innocent children, their mothers and their fathers. You would think from this bill, I think, without a revolution. That is why the Chamber of Commerce, the American Bar Association, the Association of Builders and Contractors, the Episcopalian Church, the International Association of Plumbers, the Jewish Federation of Greater Philadelphia, and many other areas oppose this legislation. I ask for a “no” vote on a badly drafted bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, just to clarify everything, if someone entered the United States illegally, they have committed a Federal misdemeanor. If they overstay their visa, they have committed a civil grounds of inadmissibility. So the people who snuck under the fence are already criminals, and what this bill does is criminalize the 40 percent who entered legally and did not go home when they were supposed to. And that is fair and that is equal.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Chairman, I rise today in strong support of H.R. 4437. This legislation is long overdue, and I want to thank Chairman SENSENBRENNER and Chairman King of New York for their great work in bringing this bill to the floor.

My constituents are fed up with porous borders, lax enforcement, and excuses about why the Federal Government is unable or unwilling to ensure that immigrants entering our country are legal.

This measure provides genuine solutions such as state-of-the-art surveillance technology, 8,000 new border agents, and widespread physical barriers.

The citizens of Altoona, Pennsylvania, express with school. They recognize the realities of a poorly enforced immigration system. When this last August an illegal alien with a prior criminal record of assault, reckless endangerment, and a weapons violation murdered three innocent people. Had the catch and release practice been eliminated and mandatory detention been in place, perhaps this painful tragedy could have been prevented.

Mr. Chairman, this bill’s time has come. We cannot continue to allow overwhelming numbers of illegal immigrants to flood our communities without any scrutiny. I urge all of my colleagues to support this commonsense approach that will combat illegal immigration and strengthen our Nation’s security.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. BERMAN), a senior member of the Judiciary Committee.

Mr. BERMAN. Mr. Chairman, I yield was given permission to revise and extend his remarks.

Mr. BERMAN. Mr. Chairman, I appreciate the gentleman yielding me the time.

I am told that the chairman of the committee, I was not on the floor, in his comments after our ranking member spoke said, This shows the difference between the Democrats and the Republicans. Democrats are for amnesty. Republicans are not.

I remember back in the campaign in 1968 for President, or one in his races for Governor, George Wallace made the comment that, No one was going to out这一刻, I am not sure that that is fair and that is equal.

Those kinds of charges and that kind of misuse of language is done by people who know that they are trying to fool the American people into thinking they are doing something.

This bill will never become law. It may pass this House, but it will never become law for the very reasons that it does not take a comprehensive approach to the problem.

The chairman of the Judiciary Committee says it is already illegal to come into the country without permission, without a visa of one kind or another; and he is right. That is why we call them illegal immigrants. And he says, so all we are doing with this bill is dealing with the people who came here illegally, has worked so well. That is why every year hundreds of thousands of people are able to cross this border and work in this country. A few do some horrible things. But they come and the law has not made a difference. Unless you take a comprehensive approach, you will never solve the problem.

If what the chairman defines as amnesty is amnesty, then George Bush is for amnesty. John Corzine, the Senator from Texas, is for amnesty; Senator Kyl of Arizona is for amnesty; and the chairman himself by saying that there needs to be a guest worker program eventually is for amnesty, because when the people who came here illegally get to come back into this country, because they have left or they have applied from within this country to work in our fields or our restaurants or other industries that have become heavily reliant on unauthorized workers, we are saying you get to do what you came here to do even though you committed an illegal act.

The fact in 1986 was not amnesty. None of the proposals now for a comprehensive immigration law include amnesty because they are all based on meeting certain future obligations, paying fines, continuing to work, coming out of the shadows, going through a background, learning whether or not they have committed any criminal acts other than the entrance here.

At the heart of why this bill will never become law are the reasons that the gentleman from California (Mr. CALVERT) spoke to. In this bill is a very logical employer verification system. It was what was missing from the 1986 bill. It is why the 1986 bill did not work. But everyone knows you can never implement an employer verification system unless you deal with the 11 million people who are now in this country. This country, otherwise every grower, every restaurant owner, every hotel, every tourism industry, huge numbers of construction firms are all going to get the answer back on this verification system: the person you have working for you is not here legally; you will have to fire them. They will be closed down.

That will never happen. The employers of this country will never let that pass, because this bill will not even allow us to offer an amendment to make it comprehensive, to accept every one of the provisions, some of them to my way of thinking are draconian and over broad, but accept every one of the provisions of this bill and just add that aspect of the bill that can make for a coherent whole. They will not even let us bring that as an amendment.

I urge that Members of this House rise above the demagogy that is going on about who stands for what and oppose this bill until we are allowed the chance to vote for a tough, comprehensive bill that does something real about illegal immigration.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLITTLE).

Mr. DOOLITTLE. Mr. Chairman, I thank Chairman SENSENBRENNER and Chairman King of New York for working on this bill and bringing something very substantial forward for our Members to vote on.

Mr. Chairman, the Federal Government for decades has ignored this problem. And it has become an enormous problem facing the entire Nation, not just the border State.

I am not sure I agree with my friend and colleague, Mr. BERMAN, that a comprehensive bill is actually possible. It is a big, big problem. We have got to
make a start at least. I think this legislation represents a good-faith attempt to begin to deal with the problem. Dealing with that 11 million is extremely difficult. I think at a minimum we need to start to deal with those who continue to enter the country illegally and be accountable for people to enter this country illegally, seek out our taxpayer-financed services, and hand the bill to the taxpayers.

I commend the chairman for putting provisions in the bill that reduce the likelihood of that continued flow of illegals into the country. I particularly like the provisions dealing with the San Diego-type fences in the urban areas. That is very, very important and I think will be effective. I know those are to be considered for approximately a dozen places along the border.

The other thing I like, in fact, several months ago I introduced a bill to end the absurd catch and release policy whereby someone has been caught with tickets, essentially, to people who enter illegally and then letting them go and show up of their own volition. So far about 90,000 people this year have failed to appear in court who entered illegally and received such tickets. I am grateful that the provision to end that was included in the bill. That will make a big difference and will start us down the road to having a more effective border security policy. And I am confident we will have to continue together and address this important issue. Please support this legislation.

Mr. CONYERS. Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield the gentleman from Alabama (Mr. ADERHOLT).

Mr. ADERHOLT. Mr. Chairman. I rise today in support of this legislation, the Border Protection, Anti-terrorism, and Illegal Immigration Control Act. I support this bill because it provides the Federal Government with needed authority to secure our borders. It also closes loopholes in current law that illegal immigrants and their facilitators exploit to enter and remain in the U.S. illegally. That is why we have a legal process to do so. Since September 11, 2001, we, as a nation, have had to re-evaluate our willingness to have among us unauthorized individuals that are here illegally. For the sake of our national security, and for the sake of the government programs that many of our colleagues on this side also cherish, we must pass a bill to begin to perform our duties to secure our borders.

This bill also facilitates cooperation between border sheriffs and Federal law enforcement by authorizing reimbursements to local sheriffs, along the border, for the cost of enforcing immigration law against illegal immigrants. This has been a growing problem, and the clarification provided in this bill and the financial resources are important.

Mr. President, I rise today in support of the Border Protection, Anti-terrorism and Illegal Immigration Act. I support this bill because it provides the Federal Government with needed authority to secure our borders. It also closes loopholes in current law that illegal immigrants and their facilitators exploit to enter and remain in the U.S. illegally. That is why we have a legal process to do so. Since September 11, 2001, we, as a nation, have had to re-evaluate our willingness to have among us unauthorized individuals that are here illegally. For the sake of our national security, and for the sake of the government programs that many of my colleagues on the other side of the aisle cherish, we must pass this bill and begin to perform our duty to secure our borders.

Since the changes will increase the number of illegal aliens in Federal custody, this bill includes provisions to increase the number of beds available to house these illegal aliens. The Department of Homeland Security will expand capacity to house those awaiting court hearings or removal.

I want to thank the Chairman for yielding time and I’ll close by asking all of my colleagues on the other side of the aisle to pass this bill; it is long overdue and a vital first step towards improving border security.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the courageous gentlewoman from California (Ms. Lee).

Ms. Lee. Mr. Chairman, let me thank the gentleman for yielding me the opportunity and for making sure that we in this entire country understand what this so-called immigration reform bill is really about.

I rise in strong opposition to this bill. At best, this legislation is unbalanced; it is harsh, and it is unfair. Quite frankly, I think it is very un-American.

It criminalizes millions of hardworking people simply for being undocumented, it would turn local law enforcement into deputies of the border patrol, and innocent people will be needlessly scrutinized and jailed. I can only imagine how this irresponsible provision will affect racial profiling of Hispanics and other minorities.

This bill also ignores due process and would expand the government’s ability to keep noncitizens locked up behind bars if they cannot be deported to their home countries. Jailed immigrants will lose the ability to appeal a deportation order.

Mr. Chairman, these are only a few of the reasons why this bill really makes no sense for our great nation. Let us address the real issues of immigration reform that include a clear path to citizenship and commonsense protections for our borders. We need full immigration initiatives that make sense, not these very punitive and very un-American provisions that are included in this bill.

We cannot, and we must not, forget the undeniable history, our history, American history, that we have as a nation of immigrants and the contribution that immigrants have had on our economy, on our diversity and our way of life. This bill, quite frankly, just flies in the face of that history, and it should be rejected.

Mr. Chairman, I want to thank the gentleman again for his leadership and for yielding me the time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. RADANOVICH).

Mr. RADANOVICH. Mr. Chairman, with great respect to both chairmen on this bill, I do understand the importance of this measure and all of the hard work that has gone into it. We do need border security, and we need to beef up our Federal personnel and protect our citizens from terrorist threats.

However, we should not be moving a border bill that imposes penalties on employees and avoids dealing with the undocumented workers who are here now.

I do not support H.R. 4437 because it does not include comprehensive guest worker reform. The constituents I represent desperately want back home in the San Joaquin Valley of California.

In 1986, Congress passed immigration reform. Two major mistakes were made when this bill was passed. Number one, it did not contain a guest worker provision, and number two, it provided amnesty for millions of illegal immigrants.

In passing immigration reform and granting amnesty in 1986, Congress thought that they had fixed immigration. Well, they were wrong because today, we have about 10 million immigrants in our country.

Now we are here once again debating an immigration bill, and there is no comprehensive guest worker provisions. In this bill, we are penalizing employers without dealing with the millions of illegal workers currently here.

As long as this House continues to avoid the need to include a guest worker program in immigration reform, we will continue to have an illegal immigration problem in the United States.
The current system gives an incentive to an employer to hire an illegal alien in an entry-level job that is labor intensive because illegal aliens work for less money than either documented aliens with green cards or United States citizens. As a result, the bad actors in areas like the hotel and restaurant business, agriculture, landscaping and the construction business, are able to have such a competitive economic advantage because of the low wages over those who are trying to do it the right way.

I can understand why the Chamber of Commerce is against this bill because of the employer verification system. I guess if I were lobbying for them, I would be, too, because they have benefited from the low wages, and the low wages that these corporations have benefited from have depressed the wages of honest, hardworking, middle-income American people and those who are trying to get these entry-level jobs who are authorized to work in this country.

The key in this bill is Mr. CALVERT’s employer verification system because that will flush out those who hire large numbers of illegal aliens and they can go into the marketplace and pay a decent wage to people who are legally entitled to work here. I think that this is the main reason why this bill should pass.

We have heard a litany of complaints about all of the enforcement provisions, fences on the border, making a criminal offense overstaying one’s visa, giving the sheriffs in border counties the authority to enforce the immigration law which they don’t have now. The fact is that those people who are against this bill don’t want any changes in the existing system except perhaps amnesty or, excuse me, earned legalization and citizenship for those who have broken the law.

This bill has our priorities straight. We have to secure the border. We have to provide law enforcement the tools to apprehend those who have broken the law, and we have to force our employers to flush out all the fake documents that are out there that are held by people who are illegally in this country, which is what the verification program proposes to do.

This is a good bill. It is a necessary first step, and if this bill is defeated, as all of those who have been saying no to everything goes down, the consequence is going to be the continuation of the intolerable existing system.

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

The CHAIRMAN. The Chair now recognizes the gentleman from New York (Mr. KAPNIS). Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 4437, the Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005.

The bill before us today incorporates both border security and immigration enforcement provisions and is the result of a strong collaborative effort by the Committee on Homeland Security and the Committee on the Judiciary to address these important issues. The Committee on Homeland Security began this process last month when we introduced the bill, H.R. 4312, entitled the Border Security and Terrorism Prevention Act of 2005. This measure focused on border security provisions and reflected a truly bipartisan effort among members of my committee to solve the problems in our border defenses. I particularly appreciate the strong and able leadership of the gentleman from Mississippi (Mr. THOMPSON), our ranking member, in achieving important goals in this bill. I also want to commend the gentlewoman from California (Ms. LORETTA SANCHEZ). Thanks to their cooperation, we were able to pass H.R. 4312 on a voice vote with absolutely no opposition.

I also want to thank my friend, Chairman SENSENIBRENNER, and his staff for their diligence and willingness to cooperate with us in expanding and improving this legislation.

Mr. Chairman, I will focus in my remarks on the border security aspects of the bill because, since September 11, it has become more and more apparent that our borders are in crisis. In addition to whatever social issues there are with immigration or whatever criminal issues there are with immigration, there are now, since September 11, brought home to us dramatically, the terrorism aspects of illegal immigration.

The homeland security provisions of this bill try to, and I believe do, very effectively address the issue of terrorism that must be confronted if we are to survive as a people.

This legislation requires 100 percent coverage of our land and maritime borders, including physical infrastructure, border patrol personnel, and the use of all available technology.

It also requires a joint and collaborative effort between the Department of Homeland Security and the Department of Defense to use all available military technology to ensure that our borders are controlled and sealed. Most importantly, I believe, and as importantly as any other provision, it ends the policy of catch and release, which has been discussed in the previous hour; and it mandates expedited removal. We no longer have the luxury; and if we are talking about, I know the gentleman from Mississippi (Mr. THOMPSON), our ranking member, was talking about, who has been in control and who has not been in control, I would be the first to say that we are dealing with a bipartisan problem which is why it requires a bipartisan effort. That was the bill that we attempted to pass out of the Homeland Security Committee, because we have to end such policies as catch and release and expedited removal.
I would hope that, as the debate goes forward, both sides acknowledge the good faith of the others. This is too serious an issue to be trivialized or demagogued. It is too serious an issue to be looked at in any kind of casual way. I listened very carefully to the gentleman from California (Mr. RADANOVICH). I understand his concerns about terrorism. The Democratic members of the committee of the House, including myself, Mr. KING and Mr. Thompson, worked tirelessly with my counterpart, Chairman KING, to create a good border security bill that had many, many good provisions; but after that bill left our committee, it fell into partisan hands to satisfy the extremist anti-immigrant groups.

Instead of giving the American people a Christmas present of a bipartisan bill that is real and fair way, we are giving them a bill that looks more like a gift from an extremist Grinch who stole Christmas and trampled our Constitution on the way. The Judiciary Committee has loaded up our bill with controversial provisions that have not been endorsed by nearly every reasonable business, immigration, and human rights group in America. I hope my chairman from New York recognizes this.

I know it is difficult, but if you look at the groups that have opposed this piece of legislation, you can understand why it is a bad bill. The Chamber of Commerce opposes this bill. The American Bar Association opposes this bill. The Catholic League, the Irish Lobby for Immigration Reform opposes this bill. The U.S. Conference of Catholic Bishops oppose this bill. What reasonable organization is left to support it?

Mr. Chairman, this bill is so ridiculous that we would have no difficulty in the House or in the Senate. Sadly, too many of our countrymen have opposed this bill. What reasonable organization is left to support it?

Mr. Chairman, at this time I yield 3 minutes to the gentleman from Texas (Mr. McCaul) who is a former Federal Agent in Special Operations. Mr. McCaul.

Mr. McCaul of Texas. Mr. Chairman, I would like to thank Chairman KING for his hard work on this much-needed legislation.

Mr. Chairman, before running for Congress, as the chairman indicated, I had a counterterrorism background as a Federal prosecutor in the Justice Department. My jurisdiction included the border states and upon this experience, I have a direct understanding of America’s need for this comprehensive border security legislation; and I am proud to say out of our committee, Mr. Chairman, it was truly bipartisan.

The Border Security and Counterterrorism Prevention Act is a result of the United States’ grave and perpetual problem with undocumented aliens. An estimated 8 million to 12 million undocumented aliens are here in the United States. Last year alone, over 1 million undocumented aliens flooded the border, and the Border Patrol estimates that many more have crossed undetected. In addition, there is evidence to support that al Qaeda would like to exploit our southwest border, and we know that it is vulnerable.

In the post-9/11 world, these figures no longer represent just an immigration problem, but rather one of national security. Americans are being compromised by our inability to identify those who are coming into our country. This commonsense legislation will work to fix this growing problem and will greatly enhance security along our Nation’s borders. If passed, America’s borders will be stronger than ever.

Mr. Chairman, I rise today in strong opposition to H.R. 4437. The chairman of the Committee on Homeland Security, the committee on which I serve, is right in saying that we worked on this bill in a very bipartisan way, at least the initial King-Sanchez bill that came from Homeland Security. We melded it over a period of 2 months. We worked back and forth many of us on our side of the committee with Mr. KING and others, and then we brought a bill to the Homeland Security Committee, a bill that dealt with border security.

By the way, it was not just the immediate border we were talking about; we were talking about issues that are affecting us all, many of the borders and airports and coastal areas included. This border security bill, even land away from the border, in the sense that it comes up to the area I represent. If you are in...
Disneyland in my district, you are less than 100 miles away from the California border with Mexico. This bill that we had in Homeland Security would have affected my area.

Now, not everything was great about the Sensenbrenner bill. In fact, I was very angry at some pieces that managed to get in. But we had a real debate, and we took our time, and we understood what we were talking about. And then this bill was taken over by the Judiciary Committee and usurped, with many, many more pieces put on, pieces that do not make any sense and really are not about border security. They are not about getting rid of the catch and release process that we have right now; they are about tightening. They are about being mean, mean to immigrants in this community. And not just those who have no documents to be in the United States; this bill dangerously is unfair and criminalizes everyday Americans regardless of what their immigration status is.

Under this legislation, the Sensenbrenner bill, it would be a criminal offense for anyone to be in the United States in violation of immigration laws. It would affect millions of legal immigrants, including lawful permanent residents and nonimmigrants who accrue technical violations of immigration laws, like failing to report a change of address.

Now, I know this because we have been working, we have been thinking, and we have been looking. But many of my colleagues may not understand the impact that the Sensenbrenner bill has on the people of America, legal residents in some cases. People would be criminalized under H.R. 4437.

In addition, this bill criminalizes anyone who assists undocumented immigrants in the United States; and this would include churches, other faith-based groups, volunteers that provide food aid, shelter, or other life-saving assistance of any type to the community who may not have documents.

Do we really want to clog up the Federal system with decent people who are just trying to be Good Samaritans? Is that what this is about? For you taxpayers, is that what you want to spend your monies on, providing public defenders for everyone we are about to put in jail? And the 11 million, supposed, because we do not even know really how many people there are here without documents, that we are trying to criminalize, women and children, where are we going to hold them? Because the mere presence of them being in the United States the day after a bill like this passes would make them felons in this country, according to Sensenbrenner.

So, it is not a good bill. This has not been thought through, the implications and how we handle it. And the money that this would cost is something that America really is not really ready for.

The Sensenbrenner bill also cripples American businesses. All of these people all of a sudden are felons. They are not in. They are not working. And all employers would be forced to use an employment eligibility verification system that, quite frankly, is not capable of handling the increase in volume that this Sensenbrenner bill would require.

The database for the employment eligibility verification system contains widespread flaws and false information, false information, which would show many legal workers as undocumented, depriving legal workers of jobs and employers of the much-needed workers, the reason these people are here.

The U.S. Chamber of Commerce and business groups across America oppose H.R. 4437 because the employers will pay the price for these impractical provisions and because enforcement-only legislation like H.R. 4437 will not create a rational immigration system needed to serve all Americans, businesses, and potential immigrants.

It does not address real comprehensive immigration reform, which is necessary for everybody out there in America who thinks that undocumented workers are a problem. This Sensenbrenner bill will not fix what we have on our hands. You have only to look at demographics to understand we in America need more workers than we can provide. And we need to get them from somewhere. So we need to get back to comprehensive immigration reform, not just closing off borders or hurting people or taking children away from mothers or deporting mothers. This bill will not solve the problem we have at hand.

And so when we were in the Homeland Security Committee, we were working on border security in the hopes that this would be a good-faith effort to work together in a bipartisan manner and to get the ball rolling to work on more comprehensive reform that would bring about what we need here: Family reunification, good economic conditions for our economy and homeland security.

I urge my colleagues to oppose H.R. 4437. We deserve a comprehensive solution to our immigration problems.

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

Mr. KING of New York. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGGREN), the chairman of the Subcommittee on Economic Security, Infrastructure Protection and Cyber Security, and the former attorney general of California.

Mr. DANIEL E. LUNGGREN of California. Mr. Chairman, there are a number of major provisions in this bill, and let me speak of one that has been referred to on both sides of the aisle, some in support and some not in support.

Section 407 which is the expedited removal section, this was adopted in the markup in the Homeland Security Committee. The question of expedited removal was one that we explored in our subcommittee. The specific context of our hearing involved the growing number of illegal border crossings by what is referred to by the service as "OTMs." Let me explain what this is.

Most people who come across the border illegally from our adjoining countries, either on the north from Canada or the south from Mexico, and voluntary return. They agree to voluntarily go home and agree that they do not go through the various processes involved. We cannot do that with those people who are not from those countries because neither Mexico nor Canada would accept them. So we have to have an acknowledgment from the country from whence they came, their home country, that they are, in fact, residents of those countries or otherwise we do not have any process that requires us to detain those people for some period of time. That requires detention space, and the subject that has been discussed before, the idea of catch and release was created as a result of insufficient detention space and insufficient resources dedicated to that proposition. After that was revealed by the press earlier this year, the administration responded by trying out a couple of pilot projects in certain sectors. Instead of catch and release, it was retains them and then have expedited removal. They found that to be successful, and so they have expanded it to the entire southern border.

Our bill mandates that not only be a temporary policy but a permanent policy. Yes, it does extend within 100 miles of the border, and it is limited to 14 days. That is, people who have been here less than 14 days, even though the current detention space is inadequate for a 2-year period of time, it does not limit it to 100 miles from the border. This is a border security bill, and we limit it in that fashion. It is directed at those who have come here.

Chairman had the privilege of a large number of people from Brazil this past year coming up, and we found that not only did they come across the border but instead of running away from our immigration officers, they ran to them. They ran to them to surrender, and they ran to them to surrender, and they could be cited so they could actually get the stay which said you have entered this country illegally, you have to show up for your hearing 90 days hence. And 90-some percent did not show up.

My question is, why did the 6 percent show up? If you look at it, we have created a system with every incentive to come back. That is why because of the pilot project. What this bill does is mandates it. It is commonsensical. It is the right thing to do. It helps us take a right step in the right direction.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield 3½ minutes to the gentleman from New Jersey (Mr. PASCRELL).
Mr. PASCARELL. Mr. Chairman. Members on both sides of the aisle believe that the government has a right to know who is coming into this country.

Secondly, it would seem to me, once you put the border into second gear, we do not accept lawlessness. But I must say to Chairman KING, a man of intellect and compassion, and I will get to that in a second, and my very good friend, I must say to the chairman that, when we look at section 602, denying criminal legal assistance to any legal permanent resident who has been unlawfully present in the country at any time in their life, what we are doing is forgetting how Italians and how Irish came into this country.

Now 911 did change a lot of things, obviously; no question about that. And it does not mean that we should open the floodgates or close them or build them or not build them. But when we forget how our ancestors got here, many times not in a pristine fashion, this is what we are doing. Mr. Chairman. You can scream to the high moon, but this is not your idea, and even if you put your name on this, I know it is not for sure. We didn’t pass this out of the Homeland Security Committee.

And by the way, how many folks are we going to have to hire to do all of this? Who is paying for this?

You have lost your background, and I mean that in a complimentary way. I do not mean that to be a wise guy. What you did just several years ago with the Irish immigrants who came here, when our British friends wanted to pluck them up and throw them out of the country, it was courageous. You cannot deny this in a bill. You cannot deny your heritage. I call on you to look at your heritage.

We are making all immigrants here suspects. I believe, and I think all of us do, that it is a moral imperative for Congress to enact comprehensive immigration reform. Both sides of the aisle agree on that. We need a full and robust approach, one that includes not only strong and effective enforcement provisions but strategies to create new legal channels for future flows of immigrants because they are coming.

Family immigration backlogs. Families, we want to unite families in a legal fashion. This bill does not do that, Mr. Chairman.

Indeed, it fails to address many of the most important elements of immigration reform while imposing harsh, considered punitive, measures. That is why I believe it is a moral imperative to vote this bill down today. I do not think it is wise, and I do not think it is a real plan. Instead of proceeding in a judicious manner that could affectively stem the flow of illegal immigration, we are debating ineffectual enforcement measures that do not increase the safety and security of the American people.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would remind Members to address their remarks to the Chairman of the Committee of the Whole.

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

I, once again, admire the passion of the gentleman from New Jersey and assure the gentleman that I hold in high esteem the contributions immigrants have made, are making and will continue to make to this country. I believe this legislation, however, is so valuable that we put it on a legal basis in fairness to those who are coming here legally and also because of the situation that developed after 9/11. Having said that, I have the greatest respect for the gentleman from New Jersey, and he and I, in our own way, will be able to resolve some of our differences.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. Dent).

Mr. DENT. Mr. Chairman, I rise today in favor of H.R. 4437. To paraphrase an old Ford commercial, border security is job one for America. Safeguarding the integrity of our borders is an important component of both economic and national security. H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, represents an important step towards the completion of this job.

H.R. 4437 modernizes and improves our border security operations, allows the Department of Homeland Security to utilize the Department of Defense surveillance assets to monitor activities near our border, and it establishes physical barriers to crossing, and it calls for the utilization of new technology, such as unmanned aerial vehicles, UAVs, to ensure that we have 100 percent coverage of the areas in question.

And in order to monitor those coming across at legal check points, it authorizes 100,000 new, full-time port-of-entry inspectors as well as the training of up to 1,500 additional K-9 units over the next 5 years. This bill will go a long way towards making sure that people who are not supposed to be here, whether they be undocumented aliens or terrorists or both, do not get here.

The border is a dangerous place. It is a dangerous place to us as a country, as it can be an open door to those wishing to do us harm. But it is also dangerous place for individuals who cross for other reasons. Many women have been murdered along the border, and most of these homicides remain unsolved. People have died in the desert after being exploited by human traffickers, known as coyotes. This bill provides for mandatory minimum sentences for those convicted of alien smuggling. It also has the potential to save many lives.

Because of the enhanced surveillance capabilities provided by the bill, we are more likely to detect individuals who are lost, in distress or who are about to become victims of crime near these border crossings.

For all of the foregoing reasons, I ask that the body pass this important legislation. I commend Chairman King and Chairman Sensenbrenner for their leadership on this issue.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. Gonzalez), the chairman of the Hispanic Caucus Task Force.

Mr. GONZALEZ. Mr. Chairman, I thank the gentlewoman from California, and I rise today in opposition to this legislation.

First of all, let us get it straight, this is not about border protection, and it is not about antiterrorism. If it was, we would be debating the bill that was voted out of Homeland Security. But instead, that bill had been hijacked and now is a vehicle used to promote ineffective and hypocritical so-called illegal immigration control.

Let us start with the obvious. When it comes to the hiring of the undocumented worker, and that is simple: Demand will always determine supply. If you were serious about limiting the number of undocumented workers coming into this country, that significant increase the fines levied against employers. This bill does not do that. Make it as easy to criminalize the act of hiring as you do the act of entry into this country; this bill does not do that. Exclude employers that hire undocumented workers from government contracts and foreign subsidies and make sure that is a fact; this bill does not do that.

Overall, we need to stop the hypocrisy, and we need to deal with the real issue. It is the hypocrisy that the immigration bill allows to pass while acknowledging that the undocumented worker comes to this country at our behest and that they make this economy work. We should be discussing the legal framework that addresses these realities, that encourages assimilation, becoming one people and one Nation.

I believe many supporters of this bill are concerned with the changing face of this country when what they are doing today and tomorrow will be changing the heart and soul of this country, which matters much more. The nature of those concerns happen to be superficial, just as this legislation is superficial. If this legislation does not fail now before it becomes law, it will fail later after it becomes law. I ask my colleagues, do not vote for failure.

Mr. LINDER. Mr. Chairman, I thank the chairman for yielding this time, and I want to commend both Chairman King and Chairman Sensenbrenner for being able to work together and bring this legislation to the floor. This is not a perfect bill, but it is a very, very good start.

Mr. Chairman, I rise in support of H.R. 4437 and urge my colleagues to...
join me. While much of our Nation's attention is rightfully focused on hostilities abroad, I am pleased that the House is working to uphold the other half of its responsibility to protect the American people, namely, the prevention of crime at home.

It is widely acknowledged that issue one of illegal immigration must be addressed on two major fronts, the first of which being the prevention of illegal entry into the United States, and the second, concentrating on finding, documenting, and deporting illegals already within our borders. The bill before us addresses both of these contentious points.

It appears that protecting our borders has drawn the ire of some, including our neighbors to the south, who have called our effort today "disgraceful and shameful" and question whether the economic prosperity of our country will be adversely affected by our actions. My response is that until they fully grasp the concept that a lack of control at the border allows in not only those seeking a better life in this country but those also seeking to destroy us, I, for one, will respond that the United States has a sovereign right and responsibility to protect its own domestic interests as it sees fit.

I agree with the assessment of many regarding the positive contributions of those from other nations, without whom many components of our economy could be hurt. But, frankly, today's debate is one of security, not commerce. If we are to believe that our immigration laws simply have no value, as our current policies would have us believe, should we then simply throw them all out, the entire lot of immigration law? I hope not.

The American people want economic prosperity, high-quality goods and low prices. I support common concerns, however, are very simple. If we fail to secure our borders, to prevent the entry of individuals illegally into this country and to uphold the rule of law, then we waste our time worrying about the strength of our economy, for an attack involving a weapon of mass destruction, carried by a terrorist who brought that weapon across our borders, would certainly destroy it all, and preventing that scenario, which is the mission of my subcommittee, the Homeland Security, full committee and the Congress as a whole, should be reason enough to support this bill.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself 3 minutes.

It is interesting that in the face of a massive failure of administration of our border security, the Congress responds not with enhancing the remedies and its personnel so that we can enforce the law, but instead comes up with a bill to dramatically change the law.

I mentioned earlier, we have cited and released individuals who never showed up, 80 percent of the time or better. And what did the administration do? They just kept doing it. That is the definition of insanity, doing the same thing over and over again and expecting a different outcome. Well, changing the law is not going to solve that. It has been a massive failure of administration. Making 11 million people without their papers agitated felons is not going to remedy the failure of the administration at the border.

The gentleman from Michigan (Mr. CONYERS) mentioned that there was a provision that could criminalize churches. In fact, it is section 202 in the base bill. It provides that people who assist those who do not have their papers could be guilty of a crime and, in fact, requires the seizure of property. We know that some of our churches that are helping the homeless do not ask for papers when they hand out the soup. In this bill it requires seizure of their properties.

I want to mention another provision I touched on earlier, and that is section 404 of the bill. It does not make any sense at all when we are talking about the need to secure our borders, which every country has a right and an obligation to do, to reinstate the exclusion of legal persons based on the place they were born.

There is a sad part of American history. In 1882, the 47th Congress of the United States passed a bill called the Chinese Exclusion Act, and that bill haunted this country, really, into 1943. It provided that people from China could not come. In section 404, we are de facto reinstating the Chinese Exclusion Act because we are saying that countries that do not cooperate with us, currently the State Department tells me it is China, Vietnam, Ethiopia and Cuba, then we have the ability to exclude people who are born in those countries.

Let me just give you an example. I have a lot of Vietnamese Americans in my district. Do you think the Communist government in Vietnam cares if we do not let a refugee from their country into the United States? Do you think that the communists in China really would be concerned if a Chinese citizen was escaping from China, because they are facing a forced abortion in China? Do you think that enhancing the Communist governments of Cuba, Vietnam and China is really about securing our Nation's borders? I think not.

This bill is defective in so many ways that a wide number of groups have opposed it. The minority leader, Ms. PELOSI, will submit the list for the RECORD.

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

Mr. KING of New York. Mr. Chairman, I yield 4 minutes to the gentleman from Alabama (Mr. ROGERS), the chairman of the Subcommittee on Management, Integration and Oversight.

Mr. ROGERS of Alabama. Mr. Chairman, I rise today in strong support of this bill and in particular the provisions of this bill that help secure our border and protect our homeland.

The bill we are considering today contains many key border security provisions from H.R. 4312, the Border Security and Terrorism Prevention Act of 2005, which was passed unanimously out of the Homeland Security Committee by a unanimous vote.

I would like to note that H.R. 4312 was the first major bill reported by the committee under the chairmanship of Mr. KING, and we appreciate his leadership.

Mr. Chairman, we have nothing less than a crisis situation on our borders. This past August I led a congressional delegation to our southern border with Mexico, and we saw firsthand vast areas without fences and densely populated areas where illegal aliens find their way across our border.

And I would urge you, Mr. Chairman, and our colleagues to refer to these individuals as what they are, they are illegal aliens, not the benign, friendly, undocumented worker phrase. They are illegal aliens.

I was impressed during this visit with the dedication and level of our Border Patrol agents. These detection dogs are instrumental in finding concealed humans, explosives, drugs, and bulk cash.

We also need to ensure new border surveillance equipment is functional and cost efficient.

Section 109 of this bill that we are considering today in particular will strengthen border security by increasing the number of canine detection teams working with our Border Patrol agents. These detection dogs are instrumental in finding concealed humans, explosives, drugs, and bulk cash.

We also need to ensure new border surveillance equipment is functional and cost efficient.

Section 109 of this bill addresses these concerns. It requires that a DHS Inspector General conduct reviews of each contract action over $20 million relating to the new Secure Border Initiative.

With thousands of new Border Patrol agents being hired, we also need to ensure they are trained as cost effectively as possible. Therefore, section 110 of this bill would instruct the GAO to evaluate and review the cost of Border Patrol training.

H.R. 4437 includes many other strong border security provisions that will improve the safety and security of this great Nation.

I commend Chairman KING for his leadership on these issues, and I urge my colleagues to support this legislation.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield ½ minutes to the gentleman from the Virgin Islands (Mrs. CHRISTENSEN), a member of the Homeland Security Committee.

Mrs. CHRISTENSEN. Mr. Chairman, I would like to commend Chairman KING and Ranking Member THOMPSON for their work on legislation which passed on a voice vote out of our Homeland
Security Committee and which is included in this bill before us today.

Mr. Chairman, securing our Nation’s air, land, and sea borders is a difficult, yet critical, task. While H.R. 4437 takes some important steps in addressing this problem through authorizing more Border Patrol agents and creating a new Border Patrol unit in my district, it also includes a number of harsh and contentious provisions which makes it impossible for it to receive the same kind of bipartisan support that was achieved in the Homeland Security Committee.

So while I am pleased that the passage of this bill would mean that over 175 miles of unprotected and open borders in the U.S. Virgin Islands, a gateway of choice for smugglers into the United States, would finally receive protection from a newly established Border Patrol unit, I remain deeply concerned that H.R. 4437 would be excessively harmful to immigrants, families, and communities. It was a much better bill when it left out of the Homeland Security Committee. And I would hope that as we continue the process of moving this bill through Congress, we would find a way to develop the final form that the legislation would take, which would protect our borders without doing harm to immigrants and Americans of all backgrounds.

Mr. KING of New York. Mr. Chairman, at such time as I may consume and yield to the gentleman from New Jersey (Mr. LoBIONDO), the chairman of the Subcommittee on Coast Guard Maritime Transportation, for the purposes of a colloquy.

Mr. LoBIONDO. Mr. Chairman, I thank the gentleman for yielding this time, and I thank him for engaging in a colloquy to clarify the intent of this bill regarding our Nation’s seaports.

Mr. Chairman, I would like to ask you to recognize the sentiment of the chairman that this bill does not intend to duplicate or supersedes existing policies and strategies that have been developed specifically for the maritime domain as part of the Strategy for Maritime Security or the National Maritime Transportation Security Plan, because these strategies provide a comprehensive framework to enhance maritime domain awareness including activities that may affect or threaten our maritime border security.

Mr. KING of New York. I would say to the gentleman that it is my intent that maritime border security strategies called for in H.R. 4437 should be developed under the framework of the Strategy for Maritime Security and in a way that supplements the maritime security strategies that are being implemented under that plan.

Mr. LoBIONDO. As the chairman knows, the Coast Guard has been identified as the lead Federal agency with responsibilities over maritime domain awareness. The Coast Guard’s efforts to enhance awareness of activities in the maritime domain, in addition to the services role as the lead law enforcement agency in the maritime environment, enhance the Nation’s capabilities to maintain security along our maritime borders. The Coast Guard carries out missions every day to interdict illegal immigrants, drugs, and suspicious objects before they reach the United States.

I ask the chairman if it is his intent to continue this House’s support of the Coast Guard’s efforts to maintain heightened border security and that this act authorizes these critical Coast Guard missions.

Mr. KING of New York. Nothing in this act should be understood to divert existing responsibilities for maritime border security or more generally any component of security in the maritime domain from the Coast Guard to any other entities in the Department of Homeland Security.

Mr. LoBIONDO. I thank the chairman for clarifying these very critically important issues regarding our maritime homeland security and the Coast Guard.

Mr. KING of New York. Mr. Chairman, I reserve the balance of my time.

Ms. ZOE LOPFREN G. California. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. HINOJOSA).

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

Mr. HINOJOSA. Mr. Chairman, I rise in strong opposition to this ill-conceived and harmful legislation, H.R. 4437. Our immigration laws are in need of a complete overhaul. There are bipartisan proposals on the table, but the majority is not interested in solutions. It is interested in finding its next wedge issue for this 2006 campaign season. Our Nation will suffer as a result.

For the past 20 years we have taken a get-tough enforcement-only approach to this immigration problem, and the result has been the situation we find ourselves in today.

Those of us who represent border districts live on the front lines on the immigration issue. Let me give you a view from where we live. Our schools, hospitals, law enforcement, and social services are being stretched to the limit. At the same time, we have experienced a surge in economic activity and growth. My area has one of the fastest rates of job growth in the Nation.

Immigration is both a challenge and an engine for growth. We need laws that are up to the challenge.

For a perspective from the front lines, listen to the words of John McClung, the president of the Texas Produce Association: “Attempting to solve our border problems by passing draconian ‘enforcement’ legislation, absent a credible guest worker program, would be counterproductive to the economy, unfair to employers, ruinous to our relations with Mexico, and, yes, that really does matter.”

Mr. Chairman, I will submit the full text of this letter into the RECORD.

This bill will not help families. In my district, our caseworkers and our advocacy organizations, on a daily basis, work with families who have been waiting 10 years or more to be reunited with loved ones—a spouse, a sister, a child, a grandparent. The backlogs are enormous, and the system is capricious and error-ridden. Call for information on your immigration case, and the temporary contract worker at the call center with little to no training in immigration rules will give you a different answer every time.

This bill does nothing to fix our immigration system. It is not reality-based. It should be rejected.

TEXAS PRODUCE ASSOCIATION
Mission, TX, December 13, 2005

Hon. RUBEN E. HINOJOSA,
Washington, DC.

DEAR REP. HINOJOSA: I am writing the Texas Congressional delegation in the belief that the Congress is perilously close to passing ill conceived immigration reform legislation that will do great harm to this country, and fail in its objectives.

My office is about five miles from the U.S./Mexico border. My home is about a third of a mile from that border. I am as mindful as any American—more than most—of the surge of illegals into this country, and I certainly understand, and sympathize with, the need most of us feel to return to the rule of law. From the front yard of my house in the rural Rio Grande Valley, I often see groups of illegals trudging down the road. Many times I’ve watched the Border Patrol agents chase them down, cuff them, and haul them away. I can tell you that there’s no satisfaction in it, no sense of the good guys prevailing. Only a sad recognition that this country’s immigration laws are a dismal failure by any measure: economic, humanitarian, political. The saving grace is that enough illegals, get through to do most of the jobs that need doing, as disgraceful, flawed and inefficient as our nonsystem may be.

At least, they get through for now. I represent an industry that employs thousands of semi-skilled laborers, and increasingly is unable to find anywhere near an adequate supply of willing workers. Most people don’t want to do stoop labor in the fields, no matter the pay scale. They certainly don’t want their kids doing it. So we truly need guest workers from Mexico or Central America or wherever. So does the restaurant industry, and the construction industry, and every other industry that requires numbers of semiskilled workers. And what is the U.S. Congress doing about this mess? Preparing, it appears, to make a very bad situation a lot worse.

Most of us get it down here in rural Texas. Why can’t more members of Congress get it?

Is the need to act tough for the media so compelling? Is the ideologue mantra of no amnesty (adjustment of status?) for lawbreakers going to be allowed to jeopardize American agriculture, and conceivably the national economy? Is the fact that these illegals want essential jobs in this country that none of our own citizens will take at any realistic pay rate of no consequence at all because they’re “illegal” or “undocumented”?

Chairman, I yield the balance of my time.
Mr. KING of New York. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Chairman, I would like to thank Chairman King and Subcommittee Chairman LUNGREN for their leadership in bringing this to the floor.

I have serious problems with some non-Homeland Security parts of this bill, but I want to praise the Homeland Security section because I think they have done a terrific job.

I would like to thank them in particular for two key provisions that we have managed to fix even though Homeland Security has broken them.

One is in section 502, the Office of Air and Marine Operations, AMO; and in section 503 relating to the Native American Customs Patrol Officer units known as the Shadow Wolves.

Section 502 relates to the AMO, which has historically been responsible for interdicting drug smuggling air- and sea-planes and ‘go-fast’ speed boats; for supporting drug interdictions and raids as well as migrant interdictions; for providing airspace security in the Nation’s capital and at special events like the Olympics; and for providing crucial maritime patrol aircraft, radar planes, for drug interdiction operations in the Caribbean and Eastern Pacific.

Now they are being deployed as a picket fence. It makes no sense, and this bill helps to start to fix that before we destroy one of our best units in the United States Government.

In section 503, the Shadow Wolves have fallen victim to the same kind of over-compartmentalized thinking that threatens AMO. The Shadow Wolves are one of the last remaining Customs Patrol Officer units in the country.

They control one of the critical points of the border, and on the interdiction front they are doing a heck of a good job. But they are not in the south, and they are not in the central part of the border, and they are not at those local other parts of the border, and they want to break them up and make them fit some arbitrary thing, when they are really more like detectives than patrol officers, and put them as part of the Border Patrol.

I do not have any axe to grind with the Border Patrol. I think they do a great job. But units like AMO and the Shadow Wolves do not fit this cookie cutter approach in trying to systematize this agency, and this bill fixes that before we lose some of our most effective anti-drug units in our entire government.

And I thank the chairman and the subcommittee chairman for finally addressing this question.

Mr. REYES. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, the well-known comedienne Joan Rivers used to say: Can we talk? And that is what I would like to say tonight, is, can we talk about a terrible bill, a bill that may feel good and make some people think they are voting for border security and to do a better job of monitoring the borders of our Nation but really is not?

We can do much better. This bill reminds me of a automobile that was built by Dr. Seuss that looked like an abomination. This bill has fenders sponsored by Congressman Issa. It has got a horn and a steering wheel sponsored by somebody else. It has got an engine that belongs to somebody else. And in its totality, it does nothing to address the issues and the problems that we have as a Nation.

It talks about getting tough on smugglers, and do my colleagues know that in many cases the immediate family members. That means, if an individual is bringing in his wife or his children or his parents, he gets zapped just like that individual that is bringing in people for profit. Terrible.

It talks about mandatory sentencing. That translates, if we are serious about that, to billions of dollars in prison construction. It does nothing for asistant U.S. Attorneys who are going to have to prosecute all these new felons. It does nothing to provide new judges to handle this process. And it certainly is silent on U.S. marshals who, today, their vehicles average about 140,000 miles when the replacement suggested mileage is about 85,000.

But, oh, no, we are not doing anything about the things that we really need on the border. We are doing things that are mean spirited, things that are illegal in keeping with the best traditions of a Nation that was founded by our immigrants. It betrays our legacy. It insults our immigrants. And I will tell my colleagues, Mr. Chairman, we can do much better.
these contracts will free up these resources and assist the department as it eliminates the harmful catch-and-release policy.

Mr. Chairman, our Nation's lawmakers did not craft our immigration laws as suggestions or reading material for insomniacs. Our laws were made to ensure proper, secure and legal entry into our country. This bill helps to accomplish exactly that, and I urge my colleagues to support it.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1 1/2 minutes to the gentleman from Maryland (Mr. HOYER), our distinguished whip.

Mr. HOYER. Mr. Chairman, let us set the record straight: This legislation is not real. It is a cynical political ploy. Do not take my word for it. Grover Norquist, one of your heroes, said this, this morning: "The good news is that the legislation that is being voted on, even with the 200 countries that would improve it and make it less problematic, is not a piece of legislation that is going to pass the Senate and be signed by the President. So we are making politics, not policy."

This bill, even if it did become law, would not solve the real issue that confronts our Nation: the Federal Government's failure to ensure that our borders are secure. Who says that? George Bush, President of the United States, says that.

Let no one be mistaken. Our Nation has a border security problem. And it has an immigration problem. These problems were not created overnight, and they will not be solved by a misguided, mean-spirited proposal that the majority has put on the floor today. The fact is, Republican inaction has left the United States ill-prepared to prevent or respond to another terrorist attack. And this legislation would do little to prevent would-be terrorists from entering our country.

Democrats are for the rule of law. We want to get border security right. But this bill is not about solving problems. It is all about harsh, punitive measures that will not work.

Oppose this legislation.

Mr. Chairman, let's set the record straight: This legislation is a cynical, political charade. But do not take my word for it. Just listen to Grover Norquist, the President of Americans for Tax Reform and a White House confidante.

This morning he is quoted as saying: "The good news is that the legislation that is being voted on, even with amendments that would improve it, is not a piece of legislation that is going to pass the Senate and be signed by the President."

This bill, even if it did become law, would not solve the real issue that confronts our Nation—the Federal Government's failure to ensure that our borders are secure.

Let no one be mistaken: Our Nation has a border security problem. And, it has an immigration problem. These problems were not created overnight. And they will not be remedied with the misguided, mean-spirited proposal that the majority has put on this floor today.

The fact is, Republican inaction has left the United States ill-prepared to prevent or respond to another terrorist attack. And this legislation would do little to prevent would-be terrorists from entering our country.

Democrats are for the rule of law, we want to get border security right. But this bill is not about solving problems. It is all about harsh, punitive measures that will not work.

This Republican Congress has simply failed to provide the resources that our Federal law enforcement agencies need to get the job done.

And, we certainly do not have the detention space necessary to keep all the undocumented migrants we detain—much less the millions of people that this bill would force us to incarcerate.

So, after allowing this situation to become a crisis, Republicans today offer a purely political proposal that promises a quick-fix, a magic bullet: Make them all criminals—the workers, their neighbors, and their employers. And, make local and State law enforcement officials do the job of the Federal Government.

Democrats have a different approach. We want to take on this challenge in a comprehensive fashion.

We would do what's necessary to protect our borders, give law enforcement the tools that they need to enforce our business laws. We would ensure that the workers they require, allow families to stay unified, and honor the principles of inclusion and freedom that have always been our hallmark. I urge my colleagues to vote against this bill.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. Price).

Mr. PRICE. Mr. Chairman, I thank the subcommittee chairman for yielding me this time to speak on this issue.

I rise to strongly support the reform of our border security and enforcement and strengthening of current law.

My constituents keep asking me: When are we going to do something about illegal immigration? When are we going to take this problem seriously? Our borders must be secure, and our laws must be enforced.

America is a good and a generous Nation. We open our arms to the world. It is that spirit that makes us unique and inviting and vulnerable. And the world has changed, and our Nation is not secure unless our borders are secure. And it ought not to be too much to ask to bring accountability to the prevention of illegal immigration. And is that not what it is all about, accountability? Those who break our immigration laws should be held accountable. Those who hire illegal aliens should be held accountable. And those who turn the other way and claim that there is no problem should be held accountable.

Mr. Chairman, we have a large and a growing crisis in our country, and it is our responsibility to act on behalf of our constituents and our Nation. Simply put, if our borders are not secure, our Nation is not secure. The time to act is now.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), our distinguished Democratic leader.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman for yielding, and I want to commend her for her tremendous leadership on keeping our borders safe and strong and secure and for moving toward a comprehensive immigration policy.

I also want to thank the ranking member of the Judiciary Committee, Mr. CONyers; and the ranking member of the Homeland Security Committee, Mr. BENNIE THOMPSON, for their outstanding work in keeping America secure.

Mr. Chairman, the previous speaker said in his opening remarks, when are we going to take this issue seriously? And the answer is: borders and the issue of immigration.

That is exactly what I would like to know. For a long time now, there have been Members on both sides of the aisle, led by Mr. KOLBE on the Republican side, who have called for comprehensive immigration reform. That would be taking this issue seriously.

We ask the same question of the President. When, Mr. President, are we going to take this issue seriously? And instead of having one bad bill after another come to the floor, we can have comprehensive bipartisan reform. It does exist now in the Kolbe-Gutierrez legislation that is also sponsored in the Senate by Senator MCCAIN and Senator KENNEDY. I want to commend Mr. GUTIERREZ on our side of the aisle for his leadership as well.

Broken borders, that is an oxymoron, something we cannot tolerate. Borders, by their nature, are our definition as a Nation and our hallmark as a country. Broken borders, they do not exist. We cannot tolerate them.

So let us say from the start that we all in this body, and I know I can speak very firmly for the Democrats, support strong border control, and it must be part and the first part of any comprehensive immigration reform. Our obligation as elected officials is to keep the American people safe, and our borders are one of our early lines of defense to do that. It used to be our first and only line of defense, but in this age of technology, more is possible. Our caucus, we have a true expert on the issue of border security, the gentleman from Texas, Mr. REYES, who just recently spoke on the floor. He is ready to further these efforts. Over and over, Democratic initiatives to make our borders more secure have been soundly rejected by the majority of the Republicans and the Republican leadership.
Democrats also support enforcing laws, current laws, against those who came here illegally and those who hire illegal immigrants; yet the Bush administration has refused to do just this. There is all of this talk about illegal immigration to the United States and about those workers who are working here illegally, and we should, but we also must have employer sanctions. Where are these people working? Why are we not enforcing the law against employers who hire illegal, undocumented people here?

The Bush administration has prosecuted only three employer sanctioned cases in the last fiscal year; only three cases. When, yes, when, are we going to take this issue seriously? That is my question, my colleagues.

The point employer clarification provision in this bill, however, would have a big percentage of error built into it because it is so unwise and would put enormous financial burdens on American businesses. Again unwisely, it would be discriminatory in questioning the legal status of not only every newcomer to our country but anyone who looked like a newcomer to our country.

Democrats have led the way to meet our urgent homeland security needs as well, not only at our borders but in all aspects identified by the 9/11 Commission; at our ports, at our nuclear facilities, at our chemical plants and rail yards. But Republicans have not done so, even 4 years after the 9/11. So if we want to talk about broken borders, as I said earlier, those borders as they define our country geographically, we can also be invaded in ways that go well beyond our borders, and that is why the 9/11 Commission has given the President and the Republican Congress a failing grade.

For the first time in our history, this bill would make it a Federal crime instead of a civil offense to be in the United States in violation of immigration laws or regulations. This provision would turn millions of immigrants currently here into criminals, hindering their ability to acquire any legal status, and would effectively frustrate the proposals that would provide real immigration reform.

Under the guise of an expansive definition of smuggling, it could make criminals out of Catholic priests and nuns, ministers, rabbis and social service workers who provide assistance and acts of charity to those in need. It would impose prison sentences of up to 5 years on those who answer God’s call and provide assistance to those in need. This is from the party who claims to promote religious and family values.

I will submit for the record a list, Mr. Chairman, a list of organizations that are opposing this bill. From the Jewish community, from the Methodist community, from the Presbyterian community, from the Catholic community, from the Lutheran community, from the Arab community, from almost every denomination that you can name; the list goes on and on of religious people of faith who are opposing this legislation.

Mr. Chairman, it simply does not take the immigration and broken borders issue seriously. It does not. It misses the mark completely by its arbitrary, discriminatory, and punitive provisions. There is an opportunity for comprehensive immigration reform.

Mr. Chairman, we all know what we must do. Democrats have long called for stronger national security, effective law enforcement and for comprehensive immigration reform, not this punitive, mean-spirited legislation that does nothing to weed out terrorists.

This Republican bill before us is an attempt to belatedly address some border security needs but fails to provide real security, as I said, as envisioned by the 9/11 Commission. It is not comprehensive immigration reform, and that is what we need. Instead, Republicans have proposed a bill that is an abomination of the worst kind. It calls upon the worst political and most craven impulses. It is a failure of leadership. It is a failure of moral leadership. All in all, if the President and elected officials, we have the responsibility to make the American people safer and to make America stronger. We can make America stronger, not only at our borders but in upholding our values and our principles.

I want to commend, again, Mr. KOLBE and others who have worked with Mr. GUTTENBERG and others on our side of the aisle to make America safe and strong, because I know that, together, America can do better.

Mr. Chairman, I include for the RECORD the list of organizations opposing this legislation.

**LIST OF GROUPS OPPOSED TO BORDER SECURITY BILL**

**LEAD NATIONAL ORGANIZATIONS**


**FAITH GROUPS**


All in all, what we must do as elected leaders of this country is lead the way to meet the urgent homeland security needs as well, not only at our borders but in all aspects identified by the 9/11 Commission. It is not comprehensive immigration reform, it misses the mark completely by its arbitrary provisions, and, again, it ignores the real need for immigration reform.

Mr. Chairman, I rise in support of this bill. Nothing is more important than providing border security for our national security. Nothing is more important than enforcing the law of the land. And we cannot go on indefinitely with immigration laws that nobody pays any attention to. Yes, indeed, this is a bill that is courageous. It is bold. Certainly, it is controversial. But it is a step in the right direction, and it moves this issue forward.

What I am most particularly interested in is the committee’s acceptance of the provision that Congressman NORWOOD and I brought to the first responders bill that would allow States to use homeland security funds, State police, local police and so forth, to round up illegal immigrants and deliver them to the Feds. In New Hampshire, we spent over $500,000 in State police funds last year doing Federal duties and $200,000 from the Marine Patrol on the sea coast. I think this is a provision that adds flexibility to a bill that needs to be passed in this Congress.

Mr. Chairman, my constituents and constituents all over the country are crying out for a just law to end this
I am certainly not saying that all of those who have come through our borders illegally are criminals or terrorists, but the possibility of letting in just one who is could cost many American lives and wreak havoc on our way of life.

Securing our borders is not closing them. I applaud Chairman SENSENBRENNER and Chairman KING and their staffs for their tireless efforts on this bill to secure our borders and prevent potential attacks.

Ms. LOFGREN of California, Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, remember at the height of Katrina, that tragedy, and we heard the words, “Good job, Brownie.” Well, we have someone equally qualified now in charge of the immigration function in the Homeland Security Department, and I think it is that level of competence that has led us to the problem that we face today, and that is that the administration has dropped the ball. We have permitted thousands, tens of thousands, of individuals to promise to appear and then simply to escape into the country. The Homeland Security administration to find them and deport them or have their matter be heard. We used to, on a regular basis during the first Bush administration, the father Bush and the Clinton administration, personally go and file a warrant, after their sentences were served out in State and local incarceration facilities and deport them. The law provides for that. The ball has been dropped on that. This bill does not direct the administration to go find those folks who should have been taken in, who should have been deported.

Mr. Chairman, I have had some questions about section 404 of the act that I have mentioned previously, and I wanted to spend a moment on that. Incredibly enough, it provides that legal individuals, permanent residents of the United States, could be precluded, barred from reentry if they leave. Let me give you an example of how it would work.

Say your son falls in love with a gal who was born in Cuba. She becomes a legal permanent resident because your son is an American citizen. They go on vacation to London. They try to come back, they get caught, but his wife, who is a legal permanent resident of the United States, is refused admission. Why? Because Cuba will not accept people who we deport. Now, do you think Fidel Castro cares whether your daughter-in-law is barred or not? I do not think so.

This is a ridiculous provision, and it is punitive towards people who were born in China, in Vietnam, in Cuba and in Ethiopia. It has nothing to do with securing our borders, but its does have a lot to do with the de facto reinstatement of the Chinese Exclusion Act of 1882 and has a very pernicious, very pernicious result for those who have fled communism in Vietnam and also in Cuba.

People are calling in wondering about this bill. They cannot believe that it is true. But let me explain how other provisions would work. The proposal is that individuals who are here without their proper documents and nothing none of us approve of, would become aggravated felons under this bill. If you are a 10-year-old and you came in here with your parents, you do not have your papers, under this bill, you are an aggregated felon. This will not make up for the Bush administration's failure at the border.

Mr. KING of New York. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this has been a very lively and interesting debate. I would hope that as we go through the amendments and into tomorrow, we would keep focusing on the fact that everyone here is well-intentioned.

We face a national crisis. We face a crisis involving international terrorism, and we must fix it. We must take significant steps. That is what this bill is.

We can have honest disagreements, but it is wrong, I believe, to be impugning motives, to be suggesting someone is anti-immigrant.

For instance, the gentlewoman from California is talking about section 404. What that does is give the Secretary of Homeland Security the right, in consultation with the Secretary of State, to take action if the Secretary deems it necessary.

That to me is an appropriate power, an appropriate discretionary power to be given to the Secretary of Homeland Security at a time when our homeland security is being threatened. It is irresponsible to not give the Secretary that power, and that is what this is about. It is a power, by the way, which the Secretary of State has had for many years.

As we go forward, let us keep in mind that this country was built by immigrants, that immigrants are essential. They are the life’s blood of our Nation. All of us are descendents of immigrants. At the same time, for our country to survive, for our country to be secure, for our country to be safe we must be as certain as we can be that the immigrants entering this country deserve to be in this country, that they are no threat to this country.

As long as we have this mass entry of millions and millions of illegal immigrants, we do not have that security that we need. We do not have the sense of safety that we need, and we are not protecting ourselves to the extent we must if we are going to avoid another September 11.

In my district on September 11. I do not want another 9/11 commission to come back in several years and say why did you not close
the borders, why did you not allow another 9/11 to go forward, to happen? Why could you not stop another 9/11? Because you did not have the guts to take the tough action.

We are being confronted here by many forces. Including big business. Big business does not want this. We also have advocacy groups that do not want it. We cannot yield our responsibility to any outside pressure groups, whether they be big business or advocacy groups. I urge the adoption of this legislation as we go through this process.

Mr. HONDA. Mr. Chairman, I rise in strong opposition to this measure.

Border security is a critical component of our nation’s security, but we cannot have true border security without addressing comprehensive immigration reform.

As U.S. Homeland Security Department Secretary Chertoff pointed out, "[t]he problem of immigration is one that’s been with this country for 20 years. So we are digging ourselves out of a hole which it took 20 years to get ourselves into."

During the past twenty years, Congress has been taking an enforcement only approach which has put us in the “hole” that Secretary Chertoff referenced.

If you want to get out of a hole, the first step is to stop digging ourselves into it.

The Border Security bill we have today will only worsen an already broken immigration system and it represents the latest in misguided enforcement only approaches.

In the past few years we have passed the Patriot Act, the Real ID act and now we are further expanding a big brother form of government by taking up this flawed bill.

To fix our immigration system we must uphold American values by reuniting families, providing earned legalization for immigrants who have proven to be law abiding members of society and as the president has said, develop a guest worker program.

Reuniting families is of particular concern for Congressional Asian Pacific American Caucus. Our family preference immigration system has not been updated in more than a decade, and an increasing number of families face periods of separation of up to twenty years.

Family reunification is impeded by immigration backlogs and by outdated quota systems.

The backlog for processing children of permanent residents to come to the U.S. is unscionable if we are a nation that truly believes in family values.

Earned legalization is important to the many Asian Americans who are here working hard, paying taxes and need a chance to adjust their status.

A fair, efficient and sensible guest worker program is also needed to provide a labor supply for American employers.

Again, the real solution requires a comprehensive approach, not a border enforcement only measure.

H.R. 4437, a bill that deals with enforcement only, ignores the reality of our current immigration challenges and will not be an effective way to address the security of our nation and the well being of our people.

The time has come for Congress to make immigration reform priorities. Congress is long overdue in passing immigration laws that meet the real needs of families and businesses while reflecting America’s tradition of embracing the contributions of immigrants.

Mr. CANNON. Mr. Chairman, I rise today to support HR 4437, the Border Protection, Antiterrorism and Illegal Immigration Control Act.

The debate over our nation’s immigration policy has steadily moved from the back of the newspaper to the front page. I should know. I’ve been working on this issue since I first came to the House of Representatives in 1996.

Americans are rightly concerned about the security and the integrity of our nation’s borders because the very system designed to stem the flow of illegal immigrants into our country is broken. Current statistics estimate that we now have at least 10 million illegal aliens in this country.

Mr. Chairman, if we are going to fix this system, it is important that we fix it in the right way, comprehensively, so that we are not back debating this issue within a year.

We need a system that will encourage well intentioned immigrants out of the shadows so they can be identified. Standing on the soap box, spouting fire and brimstone is not going to do that, but laws implementing a guest worker program will.

From 1990 to 2000, the number of U.S. Border Patrol agents nearly tripled, but illegal immigration increased by as much as 5.5 million. Increasing enforcement resources to keep out willing immigrant workers, as we did throughout the 1990s, has obviously failed.

Mr. Chairman, as most are well aware, I have long stated that enforcement, border security and a guest worker program are the pieces of the puzzle that need to be linked together to allow us to effectively control our border. A broader strategy that includes both enforcement and the creation of adequate legal channels for immigration serves our nation’s interests.

Our immigration laws and policies must reflect the realities we face today. Our economy demands workers, but our national security demands that we identify those lurking in the shadows.

An editorial that ran on KSL-TV of Utah last week stated: “Steps must be taken to stop the torrential northward flow of illegal workers. As that is accomplished, attention can focus on rationally dealing with the millions of illegal immigrants already here. A realistic temporary worker program, in some form, must be part of the effort.”

Mr. Chairman, KSL has it right. Enhanced enforcement must be a priority for immigration policy, but as part of today’s debate, we must realize that we owe it to our constituents to reexamine and improve those that contribute to true immigration reform and that includes a guest worker program.

I would like to note that the Mexican government and their President Vincente Fox have taken steps to work cooperatively with the United States to protect our southern border. What often goes unnoticed in the immigration debate is Mexico’s efforts to reign in organized crime, stemie drug trafficking and the ongoing cooperation between our Attorney Generals to combat narcotics, illegal immigration and related violence on the border. The OASISS, a joint operations initiative launched by our countries this year to stop human smuggling by criminal rackets, has helped stem the illegal flow of persons, but there is more to do. President Fox has shown himself to be an ally of America’s national and economic security by standing up to the dictators of Latin America, like Hugo Chavez, and this should not go unnoticed.

I encourage my colleagues to support this bill. Broader immigration reform has been outlined by President Bush, and there are ideas in both Houses of Congress that will restore public confidence in a safe and secure immigration system.

I stand committed to seeing comprehensive immigration reform passed out of Congress and sent to the President for his signature. That is what America wants and needs.

I would like to thank Chairman SENSENBRENNER for his tireless work on this issue. I support this bill as the first step in the process towards true immigration reform.

Mr. MARKEY. Mr. Chairman, rise in strong opposition to this bill, which fails to provide the strengthened border security our nation needs to deter terrorists while also leaving many of our internal immigration problems unresolved. This bill claims to address the problem of illegal immigration, but it offers an enforcement-only solution, where a comprehensive strategy is needed. I planned to offer two amendments to this bill. Mr. Speaker, but the Republican-controlled Rules Committee refused to permit them to be debated and voted on today on the House Floor. Many of my colleagues also were blocked from offering important amendments.

Shutting out more than 100 amendments certainly represents serious “sins of omission” by this Republican Congress. There are also many “sins of commission” tucked into this bill. For example, the bill:

Subjects members of churches and other humanitarian organizations to criminal penalties of up to 5 years in prison if they provide food, shelter, or health care to undocumented immigrants, even if they are in desperate or life-threatening circumstances; and the bill Reclassifies 11 million undocumented immigrants—including children—as aggravated felons who could be arrested and imprisoned for more than a year if they are caught.

These provisions do not make us safer. Mr. Chairman, and they do not reflect the values of our nation.

The first amendment I planned to offer today would have tightened security on the millions of cargo containers that enter our country from overseas, from Mexico and from Canada. Seven million cargo containers arrive at U.S. ports every year. These containers represent an important component of our economy, providing consumers with an enormous array of choices. In Massachusetts, the port of Boston—which became an international port in 1630 and is continually active major port in the Western Hemisphere—handles 1.3 million tons of general cargo and 12.8 million tons of bulk fuel cargos every year. Clearly, such global commerce is critical to the economic health of our country.

The same, however, cargo containers represent tempting targets for terrorists. Arms control expert Graham Allison has said that “more likely than not”, there will be terrorist attack using a nuclear bomb in our country. He has described the detonation of a nuclear explosive device in a cargo container in one of our cities as a nightmare for our country. Steven Flynn, a senior fellow at the Council on Foreign Relations and former officer in the Coast Guard, wrote in his book...
When it comes to these two programs, we should follow the Reagan Doctrine of cargo inspection and Trust and Verify that the shippers are performing as promised.

The second amendment I would have offered today, if the Republican-controlled Rules Committee in Committee it in order, deals with the issue of torture of detainees. Mr. Chairman, this issue has received considerable attention recently—and for good reason—but we cannot have a full and open debate today on the House Floor because the Republican majority has shut out my amendment.

Mr. Chairman, my amendment provides that if an alien is apprehended at or between a port of entry or along the international land or maritime borders of the United States, and is then detained pursuant to the TPA it is set forth in Section 301 of the bill, that then alien shall not be transferred or rendered to any country if there are substantial grounds to believe that the alien would be in danger of being tortured, or of being subjected to cruel, humiliating or degrading treatment or punishment.

The Convention Against Torture already bars the practice of torture, or of rendering persons to countries where they are likely to face torture or other forms of cruel, humiliating or degrading treatment. This treaty was signed by the United States during the Reagan Administration, and ratified by the Senate in 1994.

Despite our commitments under this treaty and the statements made by the Administration emphasizing that the U.S. is emphatically and unambiguously against the use of torture, reports keep growing of the U.S. sending detainees to countries where they are likely to face torture, including to countries notorious for human rights abuses. This includes countries known as “Extraordinary Rendition,” and amounts to nothing more than Outsourcing Torture.

Article 3 of the Convention Against Torture explicitly requires parties to refrain from sending persons to countries where they are likely to be tortured.

In order to be able to argue that it is meeting this obligation under the Convention, the Bush Administration has been engaging in a piece of legalistic fiction. In order to obtain “diplomatic assurances” that the transferred detainee will not be tortured, and then based on these assurances, it argues that our obligation under the Convention has been satisfied because there is no longer a substantial likelihood that the person we are sending to one of these known tortured countries will, in fact, be tortured.

In other words, our government is relying on “diplomatic assurances” or promises from countries like Egypt or Syria that they will not torture transferred detainees. Based on the word of Syria or Libya, our government is arguing that our obligations under the Convention against Torture are satisfied. Apparently, the Bush Administration’s motto here is “In Syria We Trust.”

This is outrageous. Is there any Member who thinks that we should accept the word of Syria and Libya—longtime human rights violators?

Here is how the State Department’s annual human rights report describes typical Syrian methods of interrogation:

“administering electrical shocks, pulling fingernails, forcing objects into the rectum, ...”

My amendment reaffirmed our commitment to the Convention Against Torture. It said that we should not transfer aliens who have tried to enter this country to other countries where they are likely to face torture. It said that we should not rely on “diplomatic assurances” that countries are not going to engage in torture.

My amendment would have required Customs and Border Protection to verify the security measures at the facilities of each member of the C–TPAT and FAST programs and within one year of the enactment of this bill and twice a year thereafter. Moreover, the amendment would require Customs and Border Protection to establish policies if members do not live up to their obligations under the C–TPAT and FAST programs.

Now, some of my colleagues may argue that we simply do not have the resources to conduct these validations. Or real validations would bring global commerce to a grinding halt.

The numbers simply do not support this assertion. Customs and Border Protection has approximately 100 inspectors to conduct validations, and there are approximately 11,000 “STAND PAT” and “FAST ONE” members.

If each inspector performed only about 2 validations per week, all the facilities could be validated in less than a year—within 45 weeks or so.
those people, who contribute greatly to our society, mainly in service and agricultural jobs, which they also perform illegally. The bill would make it a crime for a U.S. citizen to help an undocumented immigrant, even if this is done unknowingly. Under the expanded definition of smuggling, a citizen could be prosecuted for simply driving a neighbor to the grocery store or hospital emergency room.

Such a provision is criminalizing the work of nonprofits and religious organizations, whose sole purpose is to help human beings in need. Many organizations work on behalf of refugees and asylum seekers, helping them navigate their way through the Byzantine immigration process. Because our immigration system is so complicated, it is possible that asylum seekers are in the United States illegally for a short time. Any citizen who helps people who have fled their home country because they feared for their lives could be prosecuted under the wording of this bill. This is totally unacceptable and runs counter to the values that have made our country great. The United States is a beacon for democracy and has always been a refuge for people seeking freedom. From the first settlers who were escaping religious persecution, to Europeans escaping Communist regimes, accepting the huddled masses yearning to be free has been a part of our Nation’s genetic code.

Mr. Chairman, President Kennedy once stated, “Everywhere immigrants have enriched and strengthened the fabric of American life.” This can be seen in all aspects of our society from advances in science and medicine to great works of art and literature. If this legislation is passed, the fabric of our Nation could be permanently altered.

Mr. KING of New York. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill, modified by the amendment printed in part A of House Report 109–347, is adopted. The bill, as amended, shall be considered as an original bill for the purpose of further amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute, as modified, is as follows:

H.R. 4437
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.”

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

Sec. 1. Short title. Table of contents. Sec. 2. State defined.
Sec. 3. Sense of Congress on setting a manageable level of immigration.

TITLE I—SECURITY OF UNITED STATES BORDERS
Sec. 101. Achieving operational control on the border.
congressional records

H11821

December 15, 2005

Title VI—Terrorist and Criminal Aliens

Section 609. Naturalization Reform.

Title VII—Employment Eligibility Verification

Section 701. Employment Eligibility Verification.

Section 702. Employment Eligibility Verification Process.

Section 703. Expansion of Employment Eligibility Verification System to Previously Hired Individuals and Recruiting and Referring.

Section 704. Basic Pilot Program.

Section 705. Preparing for Implementation of Electronic Employment Eligibility Verification.

Section 706. Penalties.


Title VIII—Immigration Litigation Abuse Reduction

Section 801. Board of Immigration Appeals Removal Review Authority.

Section 802. Judicial Review of Visa Revocation.

Section 803. Reinstatement.

Section 804. Withholding of Removal.

Section 805. Certificate of Reviewability.

Section 806. Waiver of Right to Nonimmigrant Visa Issuance.

Title Sec. 2. State Defined.

In titles I, III, IV, and V of this Act, the term “State” has the meaning given it in section 2(14) of the Homeland Security Act of 2002 (6 U.S.C. 101(14)).

Title Sec. 3. Sense of Congress on Setting a Manageable Level of Immigration.

It is the sense of Congress that the immigration and naturalization policy shall be designed to enhance the economic, social and cultural well-being of the United States of America.

Title Sec. 1. Achieving Operational Control on the Border.

(a) In General.—The Secretary of Homeland Security shall determine necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as cameras, ground-based sensors, satellites, radar coverage, and cameras;

(2) physical infrastructure enhancements to prevent unlawful entry by aliens into the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers;

(3) hiring and training as expeditiously as possible additional Border Patrol agents authorized under section 502 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458); and

(4) increasing deployment of United States Customs and Border Protection personnel to areas along the international land and maritime borders of the United States where there are high levels of unlawful entry by aliens and other areas likely to be impacted by such increased deployment.

(b) Operational Control Defined.—In this section, the term “operational control” means the prevention of the entry into the United States of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

Title Sec. 1. National Strategy for Border Security.

(a) Surveillance Plan.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan shall include the following:

(1) An assessment of existing technologies employed on such borders.

(2) A description of whether and how new surveillance technologies will be compatible with existing surveillance technologies.

(3) A description of how the United States Customs and Border Protection is working, or is expected to work, with the Directorate of Science and Technology of the Department of Homeland Security to identify and test surveillance technologies.

(4) A description of the specific surveillance technology to be deployed.

(5) The identification of any obstacles that may impede full implementation of such deployment.

(6) A detailed estimate of all costs associated with the implementation of such deployment and continued maintenance of such technologies.

(7) A description of how the Department of Homeland Security is working with the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(b) National Strategy for Border Security.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a National Strategy for Border Security to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States, to include updates to the National Strategy as needed and shall submit to the Committee on Homeland Security of the House of Representatives, not later than 30 days after each such update, the updated Strategy. The National Strategy for Border Security shall include the following:

(1) The implementation timeline for the surveillance plan described in subsection (a).

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States through the international land and maritime borders of the United States.

(3) A risk assessment of all ports of entry to the United States along the international land and maritime borders of the United States with respect to—

(A) preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) detecting critical infrastructure at or near such ports of entry or borders.

(4) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(5) An assessment of staffing needs for all border security functions to account for threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.

(6) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations with respect to how the Department of Homeland Security can improve coordination with such authorities, to enable border security enforcement to be carried out in an efficient and effective manner.

(7) A prioritization of research and development objectives to enhance the security of the international land and maritime borders of the United States.

(8) A description of ways to ensure that the free flow of legitimate travel and commerce of the United States is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.

(9) An assessment of additional detention facilities and bed space needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States in accordance with the National Strategy for Border Security required under this subsection and the modification to detention requirement described in section 401 of this Act.

(10) A description of how the Secretary shall ensure accountability and performance metrics within the appropriate agencies of the Department of Homeland Security responsible for implementing the border security measures determined necessary upon completion of the National Strategy for Border Security.

(11) A timeline for the implementation of the additional security measures determined necessary as part of the National Strategy for Border Security, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, and resource estimates and allocations.

(c) Consultation.—In creating the National Strategy for Border Security described in subsection (b), the Secretary shall consult with—

(1) State, local, and tribal authorities along the international land and maritime borders of the United States; and

(2) appropriate cross-section of private sector and nongovernmental organizations with relevant expertise.

Title Sec. 2. Priority of National Strategy.—The National Strategy for Border Security described in subsection (b) shall be the controlling document for security and enforcement efforts related to securing the international land and maritime borders of the United States.

(e) Immediate Action.—Nothing in this section shall be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States pursuant to section 101 of this Act or any other provision of law.

(f) Reporting of Implementing Legislation.—After submittal of the National Strategy for Border Security described in subsection (b) to the Committee on Homeland Security of the House of Representatives, such Committee shall...
promptly report to the House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.

(2) APPROPRIATE CONGRESSIONAL COMMITTEE.—For purposes of this title, the term “appropriate congressional committee” has the meaning given it in section 2(c) of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).

SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY AGREEMENTS.

(a) IN GENERAL.—Not later than six months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees (as defined in section 102(g)) a report on the implementation of cross-border security agreements signed by the United States with Mexico and Canada, including recommendations on improving cooperation with such countries to enhance border security.

(b) UPDATES.—The Secretary shall regularly update the Committee on Homeland Security of the House of Representatives concerning such implementation.

SEC. 104. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2006, the Secretary of Homeland Security shall—

(1) in consultation with the Attorney General, enhance connectivity between the IDENT and IAFIS fingerprint databases to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien’s initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (6 U.S.C. 1221 note).

SEC. 105. ONE FACE AT THE BORDER INITIATIVE.

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report—

(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;

(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;

(3) providing a breakdown of the number of inspectors utilized by the Department at the international land border who do not have mobile communications, and cost-effectively as possible.

(a) SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.

In each of fiscal years 2007 through 2010, the Secretary of Homeland Security shall—

(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;

(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;

(3) providing a breakdown of the number of inspectors utilized by the Department at the international land border who do not have mobile communications, and cost-effective as possible.

(b) SEC. 106. SECURE COMMUNICATION.

The Secretary of Homeland Security shall, as expeditiously as practicable, develop and implement a plan to ensure clear and secure two-way communication capabilities—

(1) among all Border Patrol agents conducting operations between ports of entry;

(2) between Border Patrol agents and their respective Border Patrol stations;

(3) between Border Patrol agents and residents in remote areas along the international land border who may have mobile communications, as the Secretary determines necessary; and

(4) between all appropriate Department of Homeland Security border security agencies and State, local, and tribal law enforcement agencies.

SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.

In each of fiscal years 2007 through 2010, the Secretary of Homeland Security shall—

(1) providing a breakdown of the number of trained detection canines for use at United States ports of entry and along the international land and maritime borders of the United States.

SEC. 109. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.

(a) IN GENERAL.—The Inspector General of the Department of Homeland Security shall review each contract action related to the Department’s Secure Border Initiative having a value greater than $20,000,000, to determine whether such actions, and their associated cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and timelines, each such action fully complies with applicable laws, and to be devoted to the NCR airspace security mission.

(b) REPORT BY INSPECTOR GENERAL.—Upon completion of each review described in subsection (a), the Inspector General shall submit to the Secretary of Homeland Security a report containing the findings of the review, including findings regarding any cost overruns, significant delays in contract execution, lack of rigorous departmental contract management, inefficient budgeting, and a successful financial oversight, bundling that limits the ability of small business to compete, or other high risk business practices.

(c) REPORT BY SECRETARY.—Not later than 30 days after the Inspector General completes a review under subsection (b), the Secretary of Homeland Security shall submit to the appropriate congressional committees a report on the findings of the review by the Inspector General and the steps the Secretary has taken, or plans to take, to address the problems identified in such report.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General, an additional amount equal to not less than five percent for fiscal year 2008, and at least six percent for fiscal year 2009, to be devoted to the NCR airspace security mission.

(e) AUTHORIZATION OF APPROPRIATIONS.—The Comptroller General of the United States shall conduct a review of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how the curriculum has changed since September 11, 2001.

(f) REVIEW AND BREAKDOWN.—(1) The review shall address the following:

(a) the cost-effectiveness of increasing the number of Border Patrol agents trained per year and reducing the per agent costs of basic training;

(b) the scope and quality of basic training needed to fulfill the mission and duties of a Border Patrol agent.

(g) A PPROPRIATE CONGRESSIONAL COMMITTEE.—The appropriate congressional committees shall—

(1) the result of unlawful entry of aliens; and

(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.

(b) VALUE OF REIMBURSEMENTS.—Reimbursements for submitted damages as outlined in subsection (a) shall not exceed the value of the private infrastructure prior to the damages.

(c) REPORTS.—Not later than six months after the date of enactment of this Act and every subsequent six months until the amount appropriated for this section is expended in its entirety, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Senate Committee on Homeland Security and Governmental Affairs a report that details the impact the airspace security mission in the National Capital Region (in this section referred to as the "NCR") will have on the ability of the Department of Homeland Security to protect the international land and maritime borders of the United States. Specially, the report shall address—

(1) the specific resources, including personnel, assets, and facilities, devoted or planned to be devoted to the NCR airspace security mission; and

(2) the scope and quality of basic training.

SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the basic training curriculum provided to Border Patrol agents by the Department of Homeland Security to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) COMPONENTS OF REVIEW.—The review shall include the following components:

(1) an evaluation of how the curriculum has changed since September 11, 2001.

(2) an evaluation of how utilizing comparable Federal training programs, proficiency testing to streamline training, and long-distance learning programs may affect the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty port of entry inspectors.

(3) a report detailing the impact the airspace security mission in the National Capital Region (in this section referred to as the "NCR") will have on the ability of the Department of Homeland Security to protect the international land and maritime borders of the United States.

SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDERS.

(a) IN GENERAL.—Subject to the amount appropriated in subsection (d) of this section, the Secretary of Homeland Security shall reimburse property owners for costs associated with repairing damages to the property owners’ private infrastructure constructed on a United States Government right-of-way delineating the international land border when such damages are—

(1) the result of unlawful entry of aliens; and

(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.

SEC. 113. BORDER PATROL UNIT FOR VIRGIN ISLANDS.

Not later than September 30, 2006, the Secretary of Homeland Security shall establish at
least one Border Patrol unit for the Virgin Islands of the United States.

SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDERS.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives on the progress of the Department of Homeland Security in tracking the travel of Central American gangs across the international land border of the United States and Mexico.

SEC. 115. COLLECTION OF DATA.

Beginning on October 1, 2006, the Secretary of Homeland Security shall deploy radiation portal monitors at all United States ports of entry and consult with members of the private sector, and refer to local hospitals or other health facilities.

SEC. 116. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.

(a) DEPLOYMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall deploy radiation portal monitors at all United States ports of entry and consult with members of the private sector, and refer to local hospitals or other health facilities.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the Department’s progress toward carrying out the deployment described in subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subsection (a) such sums as may be necessary for each of fiscal years 2006 and 2007.

SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.

With respect to the Secure Border Initiative and for the purposes of strengthening security along the international land and maritime borders of the United States, the Secretary of Homeland Security shall conduct outreach to and coordinate with representatives of the private sector, including business councils, associations, and small, minority-owned, women-owned, and disadvantaged businesses to:

(1) identify existing and emerging technologies, best practices, and business processes;

(2) maximize economies of scale, cost-effectiveness, systems integration, and resource allocation; and

(3) identify the most appropriate contract mechanisms to enhance financial accountability and mission effectiveness of border security programs.

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

SEC. 201. DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) in subparagraph (N), by striking “(1)A” or (2) of section 274(a) (relating to alien smuggling)” and inserting “section 274(a)” and by adding a semicolon at the end; and

(2) in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph or subparagraph (G) or (F) of section 275 or section 276 for which the term of imprisonment was at least one year’’;

(3) in subparagraph (U), by inserting before “an attempt” “section 107(a)(27)”;

and

(4) by striking all that follows subparagraph (U) and inserting the following:

“The term applies—

’’(i) to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years;

(ii) even if the length of the term of imprisonment is based on recidivist or other enhancements;

(iii) to an offense described in this paragraph even if the statute setting forth the offense of conviction sets forth other offenses not described in this paragraph, unless the alien affirmatively shows, by a preponderance of the evidence and using public records related to the conviction, including court records, police records and presentence reports, that the particular facts underlying the offense do not satisfy the generic definition of that offense; and

(iv) regardless of whether the conviction was entered before, on, or after September 30, 1996, and notwithstanding any other provision of law (including any effective date).’’.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to offenses that occur before, on, or after the date of the enactment of this Act.

SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.

(a) IN GENERAL.—Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended to read as follows: ‘‘ALIEN SMUGGLING AND RELATED OFFENSES—

SEC. 274. (a) CRIMINAL OFFENSES AND PENALTIES.—

(1) PROHIBITED ACTIVITIES.—Whoever—

(A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States, knowing or in reckless disregard of the fact that such person is an alien who the offender knew or had reason to believe was an alien—

(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain—

(i) in the case of a first violation of this subparagraph, be imprisoned for not more than 20 years, or fined under title 18, United States Code, or both; and

(ii) for any subsequent violation, be imprisoned for not less than 3 years nor more than 20 years, or fined under title 18, United States Code, or both;

(C) in the case where the offense was committed for commercial advantage, profit, or private financial gain and involved 2 or more aliens other than the offender, be imprisoned for not less than 3 nor more than 20 years, or fined under title 18, United States Code, or both;

(D) in the case where the offense furthers or involves committing any other offense against the United States or any law of a foreign country for which the term of imprisonment is punishable by imprisonment for more than 1 year, be imprisoned for not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including—

(i) transporting a person in an engine compartment, storage compartment, or other confined space;

(ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation;

(iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner, be imprisoned not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

(F) in the case where the offense caused serious bodily injury (as defined in section 1365 of title 18, United States Code, including any conduct that would violate sections 2241 or 2242 of title 18, United States Code, if the conduct occurred in the special maritime and territorial jurisdiction of the United States) to any person, be imprisoned for not less than 30 years, or fined under title 18, United States Code, or both;

(G) in the case where the offense involved an alien who the offender knew or had reason to believe was an alien—

(i) engaged in terrorist activity (as defined in section 212(a)(3)(B); or

(ii) intending to engage in such terrorist activity,

be imprisoned for not less than 10 nor more than 30 years, or fined under title 18, United States Code, or both; and

(H) in the case where the offense caused or resulted in the death of any person, be punished by death or imprisoned for not less than 10 years’’;

(b) DEFINITION OF CRIMINAL SMUGGLING.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended—

(1) in paragraph (1)(A), by striking “(1)A” or (2) of section 274(a) (relating to alien smuggling)” and inserting “section 274(a)” and by adding a semicolon at the end; and

(2) in section 275(a) or 276 committed by a person who violates the provisions of paragraph (1) shall—

(A) except as provided in subparagraphs (D) through (H), in the case where the offense was not committed for commercial advantage, profit, or private financial gain, be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both;

(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain—

(i) in the case of a first violation of this subparagraph, be imprisoned for not more than 20 years, or fined under title 18, United States Code, or both; and

(ii) for any subsequent violation, be imprisoned for not less than 3 years nor more than 20 years, or fined under title 18, United States Code, or both;

(C) in the case where the offense was committed for commercial advantage, profit, or private financial gain and involved 2 or more aliens other than the offender, be imprisoned for not less than 3 nor more than 20 years, or fined under title 18, United States Code, or both;

(D) in the case where the offense furthers or involves committing any other offense against the United States or any law of a foreign country for which the term of imprisonment is punishable by imprisonment for more than 1 year, be imprisoned for not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including—

(i) transporting a person in an engine compartment, storage compartment, or other confined space;
years, or any term of years, or for life, or fined under title 18, United States Code, or both.

(3) **EXTRATERRITORIAL JURISDICTION.**—There is extraterritorial Federal jurisdiction over the offenses described in subsection (b).

(b) **EMPLOYMENT OF UNAUTHORIZED ALIENS.**—

(1) **IN GENERAL.**—Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in paragraph (2), shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) **ALIEN DESCRIBED.**—A alien described in this paragraph is an alien who—

(A) is an unauthorized alien (as defined in section 274A(h)(3)); and

(B) has been brought into the United States in violation of subsection (a).

(c) **SEIZURE AND FORFEITURE.**—

(1) **IN GENERAL.**—Any property, real or personal, that has been used to commit or facilitate a violation of this section, or that such alien had come to, entered, resided, or remained, or been present, or any country from which or to which such alien is discovered by an immigration officer. during any judicial or administrative proceeding, shall be subject to forfeiture.

(2) **APPLICABLE PROCEDURES.**—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 63 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such seizures and forfeitures shall be made by a federal judge or administrative adjudicator, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(d) **ADMISSIBILITY OF EVIDENCE.**—

(1) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS. Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to come to, enter, reside, remain, or be in the United States or that the crime was committed subsequent to a conviction for an aggravated felony:

(A) Any order, finding, or determination concerning an alien’s status or lack thereof made by a federal judge or administrative adjudicator (including an immigration judge or an immigration officer) during any judicial or administrative proceeding authorized under the immigration laws or regulations prescribed thereunder.

(B) An official record of the Department of Homeland Security, Department of Justice, or the Department of State concerning the alien’s status or lack thereof.

(C) Testimony by an immigration officer having personal knowledge of the facts concerning the alien’s status or lack thereof.

(D) Videotaped testimony. Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deposed, cross-examined, or deposed from outside the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for deposition at the deposition and the deposition otherwise complies with the Federal Rules of Evidence.

(f) **DEFINITIONS.**—For purposes of this section:

(1) The term ‘lawful authority’ means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise or obtained after trial or admission of the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is an aggravated felony or other qualifying crime, and the criminal trial for such violation of this section shall not be bifurcated.

(2) An offense under subsection (a) or paragraph (1) of this section continues until the alien is discovered within the United States by immigration officers.

(3) For purposes of this section, the term ‘attempts to enter’ refers to the general intent of the alien to enter the United States, as evidenced by the defendant’s specific acts, and references to the intent of the alien to violate the law.”

**SEC. 204. REENTRY OF REMOVED ALIENS.**

Section 275 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking all that follows “United States” the first place it appears and inserting a comma;

(B) in the matter following paragraph (2), by striking “imprisoned not more than 2 years,” inserting “imprisoned not more than 1 year and not more than 2 years,”;

(C) by adding at the end the following: “It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien’s reembarkation at a place outside the United States an alien’s application for admission from a contiguous territory, the Secretary of Homeland Security has expressly consented to the alien’s reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.”;

(B) in paragraph (2), by striking “imprisoned not more than 20 years,” and inserting “imprisoned for a term of not less than 5 years and not more than 10 years,”

(C) in paragraph (3), by striking “or” and inserting “,”;

(D) in paragraph (4), by striking “imprisoned for more than 10 years,” and inserting “imprisoned for a term of not less than 5 years and not more than 10 years,”;

(E) by adding at the end the following: “The prior convictions in paragraphs (1) and (2) and elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for such violation shall not be bifurcated.”

(2) in subsection (b)—

(A) in paragraph (1), by striking “44(c)” and inserting “242(h)(5);”;

(B) in paragraph (2), by striking “or” and inserting “,”;

(C) in paragraph (3), by striking “701(b)(4)” and inserting “Secretary of Homeland Security”; and

(D) in paragraph (4), by striking “or” and inserting “.”;

(E) by adding at the end the following: “The prior convictions in paragraphs (1) and (2) and elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for such violation shall not be bifurcated.”

(F) by adding at the end the following new subparts:

(1) **EXTRATERRITORIAL JURISDICTION.**—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

(2) § 277 of the Immigration and Nationality Act (8 U.S.C. 1327) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking all that follows “United States” the first place it appears and inserting a comma;

(B) in the matter following paragraph (2), by striking “imprisoned not more than 2 years,” inserting “imprisoned not more than 1 year and not more than 2 years,”;

(C) by adding at the end the following: “It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien’s reembarkation at a place outside the United States an alien’s application for admission from a contiguous territory, the Secretary of Homeland Security has expressly consented to the alien’s reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.”;

(B) in paragraph (2), by striking “imprisoned not more than 20 years,” and inserting “imprisoned for a term of not less than 5 years and not more than 10 years,”

(C) in paragraph (3), by striking “or” and inserting “,”;

(D) in paragraph (4), by striking “imprisoned for more than 10 years,” and inserting “imprisoned for a term of not less than 5 years and not more than 10 years,”;

(E) by adding at the end the following: “The prior convictions in paragraphs (1) and (2) and elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for such violation shall not be bifurcated.”

(F) by adding at the end the following new subparts:

(1) **EXTRATERRITORIAL JURISDICTION.**—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.
SEC. 206. PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.

Section 924(c) of title 18, United States Code, is amended—

(1) in paragraphs (1)(A) and (1)(D)(ii), by inserting “, alien smuggling crime,” after “crime of violence” each place it appears; and

(2) by adding at the end the following new paragraph:

“(6) For purposes of this subsection, the term ‘alien smuggling crime’ means any felony punishable under subsection (a), section 276, section 2259(a), section 240B, or section 237(a)(2)(A)(iii) or section 237(a)(4).

SEC. 207. VOLUNTARY DEPARTURE PERIOD—

Such section is further amended—

(A) in subsection (a)(3), as redesignated by paragraph (1)(C)—

(1) by striking paragraph (A) to read as follows:

“(A) IN LIEU OF REMOVAL.—Subject to subparagraphs (A), (B), and (C), permit an alien to depart voluntarily under paragraph (1) to post a voluntary departure bond, to be sentenced upon the finding that the alien has departed the United States within the time specified.

(2) in subparagraphs (C) and (D)(ii) and inserting “subparagraphs (D) and (E)(ii);”

(3) in subparagraphs (C) and (D), by striking “subparagraphs (A), (B), and (C)”;

(4) by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (C), (D), and (E), respectively;

and

(5) by inserting after subparagraph (A) the following new subparagraph:

“(B) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permit to depart voluntarily under paragraph (2) shall not be valid for a period exceeding 60 days, and may be granted only after a finding that the alien has established that the alien has the means to depart the United States and intends to do so. An alien permitted to depart voluntarily under paragraph (2) shall post a bond, in an amount necessary to ensure that the alien will, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive posting of a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of such a bond would create financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.

(6) VOLUNTARY DEPARTURE AGREEMENTS.—

Subsection (c) of such section is amended to read as follows:

“(1) VOLUNTARY DEPARTURE AGREEMENTS.—

Voluntary departure will be granted only as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include provisions granting the right to any further motion, appeal, application, petition for review relating to removal or relief or protection from removal.

(2) CONCLUSION OF REMOVAL PROCEEDINGS.—In connection with the alien’s agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security in writing in the exercise of discretion may order a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

(3) FAILURE TO COMPLY WITH AGREEMENT AND EFFECT OF DEFAULT APPEAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure, or fails to comply with any other terms of the agreement (including a failure to timely post any required bond), the alien automatically becomes ineligible for the benefits of the agreement, as described in subsection (d), and subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b). However, if an alien who has agreed to be removed later files a timely appeal of the immigration judge’s decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien’s voluntary departure agreement and the consequences thereof, but the alien may not again be granted voluntary departure while the alien remains in the United States.”.

(4) ELIGIBILITY.—

Subsection (e) of such section is amended to read as follows:

“(g) ELIGIBILITY.—

“(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to depart voluntarily under this subsection of the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

(2) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class or classes of aliens. The Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) for any class or classes of aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court may review any regulation issued under this subsection.

(3) Voluntary Departure Period Not Affected.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary’s discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect,reverse, disaffirm, delay, stay, or toll the alien’s obligation to depart from the United States during the period agreed to by the alien and the Secretary.

(4) No Tolling.—Subsection (f) of such section is amended by adding at the end the following new sentence: “Notwithstanding any other provision of law (statutory or nonstatutory), including section 241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reverse, disaffirm, delay, stay, or toll the alien’s obligation to depart from the United States for any class or classes of aliens.”

(5) ELIGIBILITY FOR VOLUNTARY DEPARTURE.—

Subsection (d) of section 204B of the Immigration and Nationality Act (8 U.S.C. 1229c), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

“(4) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary’s discretion before the expiration of the period allowed for voluntary departure, any other provision of law (statutory or nonstatutory), including section 241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reverse, disaffirm, delay, stay, or toll the alien’s obligation to depart from the United States during the period agreed to by the alien and the Secretary.”

(5) Penalties for Failure to Depart Voluntarily.—

Subsection (d) of such section is amended to read as follows:

“(4) Penalties for Failure to Depart.—If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the following provisions apply:

“(1) CIVIL PENALTY.—

“(A) In general.—The alien shall be liable for a civil penalty of $3,000.

(B) Specified in Order.—The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

(C) Collection.—If the Secretary of Homeland Security thereafter establishes that the alien failed to depart voluntarily within the time allowed, the further procedure shall be necessary to establish all liability, and the Secretary may collect the civil penalty at any time thereafter and by whatever means prescribed by law.

“(2) INELIGIBILITY FOR BENEFITS.—An alien shall not be eligible for any benefits under this title until any civil penalty under this subsection is paid.

“(2) INELIGIBILITY FOR RELIEF.—An alien shall not be eligible during the time the alien remains in the United States.”.
the United States and for a period of 10 years after the alien’s departure for any further relief under this section and sections 240A, 245, 248, and 249A.

**SIOPENING.**—(a) IN GENERAL.—[subject to paragraph (B), the alien will be ineligible to reopen a final order of removal, such order of removal shall take effect upon the alien’s failure to depart, or the alien’s violation of the conditions for voluntary departure, during the period described in paragraph (2).]

(2) IMPLEMENTATION OF EXISTING STATUTORY PENALTIES.—The Secretary of Homeland Security shall implement regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act, as amended by paragraph (1).

(d) EFFECTIVE DATES.—(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all grants ordering voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) on or after the date of the enactment of this Act.

(b) EXCEPTION.—The amendment made by subsection (a) shall not apply to any alien who is a national of any country that has not signed or acceded to the United Nations Convention Against Torture.

**SEC. 210. ESTABLISHMENT OF A SPECIAL TASK FORCE FOR COORDINATING AND DISTRIBUTING INFORMATION ON FRAUDULENT IMMIGRATION DOCUMENTS.**

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a task force known as the Task Force on Fraudulent Immigration Documents to carry out the following:

(1) Collect information from Federal, State, and local law enforcement agencies, and foreign governments on the production, sale, and distribution of fraudulent documents intended to be used to enter or to remain in the United States unlawfully.

(2) Maintain that information in a comprehensive database.

(3) Conduct the information into reports that will identify activities of the Department of Homeland Security in identifying fraudulent documents being used to enter or to remain in the United States unlawfully.

(b) USE OF INFORMATION.—The Department of Homeland Security shall provide the task force with information which shall be used to:

(1) Develop a system for distributing these reports on an ongoing basis to appropriate Federal, State, and local law enforcement agencies.

(2) Distribute the reports to appropriate Federal, State, and local law enforcement agencies.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse comitatus under section 385 of title 18, United States Code.

**SEC. 290. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY AND FAILING TO RETURN TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.**

(a) ADMISSIBLE ALIENS.—Paragraph (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) in subparagraph (A), by striking “within 5 years of” and inserting “before, or within 5 years of”; and

(2) in subparagraph (B) by striking “within 10 years of” and inserting “before, or within 10 years of.”

(b) FAILURE TO DEPART, APPLY FOR TRAVEL DOCUMENTS, OR APPEAR FOR REMOVAL OR DEPORTATION.—Section 235(d) of such Act (8 U.S.C. 1225d) is amended—

(1) in subsection (a), by striking “Commissioner” and inserting “Secretary of Homeland Security”;

(2) by striking “before, or within 10 years of” the date of the enactment of this Act, and inserting “before, or within 10 years of.”

(c) DETERRING ALIENS FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.—Section 235(h)(6) of such Act (8 U.S.C. 1225(h)(6)) is amended—

(1) by inserting “before, or within 10 years of” in place of “within 10 years of” the date of the enactment of this Act, and inserting “before, or within 10 years of.”

(d) EFFECTIVE DATES.—(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act with respect to aliens who are ordered removed from the United States after the date of the enactment of this Act.

(2) VOLUNTARY DEPARTURE.—The amendment made by subsection (c) shall take effect on the date of the enactment of this Act and shall apply with respect to conduct occurring on or after such date.

**SEC. 301. JOINT STRATEGIC PLAN FOR UNITED STATES BORDER SURVEILLANCE AND SUPPORT.**

(a) IN GENERAL.—The Secretary of Homeland Security and the Secretary of Defense shall develop a joint strategic plan to use the authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase surveillance and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist with the surveillance and protection of the United States border with Mexico, the enforcement of immigration laws, and the protection of the American people from the hazards of illegal immigration.

(b) DUTIES.—With respect to the implementation of the joint strategic plan:

(1) The Secretary of Homeland Security and the Secretary of Defense shall submit to Congress a report containing—

(A) a description of the use of Department of Defense equipment to assist with the surveillance by the Department of Homeland Security of United States borders;

(B) a description of the use of Department of Defense equipment by the Department of Homeland Security to carry out a national intelligence analysis of the degree of capability of the Department of Homeland Security to detect, track, and apprehend unlawful entries into the United States and to provide law enforcement assistance to Federal, State, and local law enforcement agencies; and

(C) a description of the use of Department of Defense equipment by the Department of Homeland Security to support United States Department of Homeland Security operations.

(2) The joint strategic plan shall be reviewed and updated biennially.

**SEC. 302. BORDER SECURITY THREAT ASSESSMENT AND DISTRIBUTION OF INFORMATION.**

(a) ESTABLISHMENT OF COMMITTEE.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall establish a committee to carry out the following:

(1) Coordinate and provide government officials with information regarding the threats to homeland security, including threats to the homeland security of Indian tribes administered under the following programs:

(A) The State Homeland Security Grant Program.

(B) The Urban Area Security Initiative.

(C) The Tribal Homeland Security Grant Program.

(D) The Anti-Terrorism Grant Program.

(E) The State Domestic Security Advisory Committee.

(b) SUPPORT FOR BORDER SECURITY NEEDS.—Based on the evaluation conducted pursuant to paragraph (a), the Secretary of Homeland Security shall provide appropriate border security assistance on land directly adjacent to the international land border of the United States under the following programs:

(1) The State Homeland Security Grant Program.

(2) The Tribal Homeland Security Grant Program.

(c) SHARING CAPABILITY.—The Secretary shall share information with the State Homeland Security Grant Program, the Tribal Homeland Security Grant Program, and the Urban Area Security Initiative.

**SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.**

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall carry out a national border security exercise for the purposes of:

(1) involving officials from Federal, State, territorial, local, tribal, and international governments, and representatives from the private sector;

(2) testing and evaluating the information sharing capability among Federal, State, territorial, local, tribal, and international governments.

**SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.**

(a) ESTABLISHMENT OF COMMITTEE.—Not later than one year after the enactment of this Act, the Secretary of Homeland Security shall establish an advisory committee to be known as the Border Security Advisory Committee (in this section referred to as the “Committee”).

(b) DUTIES.—The Committee shall advise the Secretary on issues relating to border security and enforcement along the international land and maritime border of the United States.

(c) MEMBERSHIP.—The Committee shall consist of:

(1) not more than 12 members, representatives of Federal, State, and local government agencies or officials; representatives of appropriate international governmental agencies; and representatives of the private sector; and

(2) representatives of the public and representatives from such States.

**SEC. 305. PERMITTED USE OF HOMELAND SECURITY GRANT FUNDS FOR BORDER SECURITY ACTIVITIES.**

(a) REIMBURSEMENT.—The Secretary of Homeland Security may appropriate amounts under a covered grant to use those amounts to reimburse itself for costs it incurs in carrying out any activity allowed by such grant that is carried out by a Federal agency on behalf of the State.

(b) USE OF PRIOR YEAR FUNDS.—Subsection (a) shall apply to all covered grant funds received by a State in prior fiscal years.

(c) COVERED GRANTS.—For purposes of subsection (a), the term “covered grant” means grants provided to the Department of Homeland Security by a State for homeland security activities.
(3) Law Enforcement Terrorism Prevention Program.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

SEC. 301. MANDATORY DETENTION FOR ALIENS APPEAREHANCED AT OR BETWEEN PORTS OF ENTRY.

(a) IN GENERAL.—Beginning on October 1, 2006, an alien who is attempting to illegally enter the United States and who is apprehended at a United States port of entry or along the international land or maritime border of the United States, who has not been admitted or paroled into the United States, who has not been admitted or paroled into the United States by this Act, and who arrives by aircraft at a port of entry or who is present in the United States and who is apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.

(b) CRITERIA FOR SELECTION.—Notwithstanding subclause (I), the Secretary of Homeland Security shall submit to the Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country. The report shall include such information with respect to any such deaths and in connection therewith:

(1) Whether any crimes were committed by personnel of the Department of Homeland Security.

(2) Whether any such deaths were caused by negligence or deliberate indifference by such personnel.

(3) Whether Department practice and procedures were properly followed and obeyed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to all aliens apprehended on or after such date.

SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

Subject to the availability of appropriations, the Secretary of Homeland Security shall utilize:

(1) all available detention facilities operated or contracted by the Department of Homeland Security;

(2) all possible options to cost effectively increase available facilities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention.

SEC. 403. ENHANCED CAPACITY FOR UNLAWFUL ALIENS.

(a) IN GENERAL.—The Secretary of Homeland Security is authorized to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.

(b) CRITERIA FOR SELECTION.—Notwithstanding the provision of this Act, the Secretary shall select from among those entities which have a stake in border security and preventing terrorist entry, including, specifically, the Department should consider whether a Tribal Smart Border working group should further examination of cultural sensitivity training, as exists in Arizona with the Tohono O’odham Nation, should be expanded elsewhere; and

(2) the Secretary of Homeland Security develops a National Strategy for Border Security, it should take into account the needs and missions of such agencies that has a stake in border security to ensure that the agencies work together cooperatively on issues involving Tribal lands.

TITLE IV—DETECTION AND REMOVAL

SEC. 401. MANDATORY DETENTION FOR ALIENS APPEAREHANCED AT OR BETWEEN PORTS OF ENTRY.

(a) IN GENERAL.—Beginning on October 1, 2006, an alien who is attempting to illegally enter the United States and who is apprehended at a United States port of entry or along the international land and maritime border of the United States shall be detained until removed or and immediately departs from the United States, pursuant to section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(b) REQUIREMENTS DURING INTERIM PERIOD.—Beginning 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall develop a National Strategy for Border Security recommendations on how to enhance Department cooperation with sovereign Indian Nations on securing borders and preventing terrorist entry, including, specifically, the Secretary should consider whether a Tribal Smart Border working group should further examination of cultural sensitivity training, as exists in Arizona with the Tohono O’odham Nation, should be expanded elsewhere; and

(2) the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deport an alien citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to all aliens apprehended on or after such date.

SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRIATION.

Not later than the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country. The report shall include such information with respect to any such deaths and in connection therewith:

(1) Whether any crimes were committed by personnel of the Department of Homeland Security.

(2) Whether any such deaths were caused by negligence or deliberate indifference by such personnel.

(3) Whether Department practice and procedures were properly followed and obeyed.

(4) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.

(5) Whether reports of such deaths were made under the Deaths in Custody Act.

SEC. 407. EXPEDITED REMOVAL.

(a) IN GENERAL.—Section 235(b)(1)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)(i)) is amended—

(1) by inserting Attorney General’’ after the words ‘‘Secretary of Homeland Security’’ each place it appears; and

(b) by adding at the end the following new subclause:—

‘‘(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply Section 202(a) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been removed into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.’’.

(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended by striking ‘‘who arrives by aircraft at a port of entry’’ and inserting ‘‘, and who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry’’.

SEC. 408. GAO STUDY ON DEATHS IN CUSTODY.

The Comptroller General of the United States, within six months after the date of the enactment of this Act, shall submit to Congress a report on the deaths in custody of detainees held on immigration violations by the Secretary of Homeland Security. The report shall include the following information with respect to any such deaths and in connection therewith:

(1) Whether any crimes were committed by personnel of the Department of Homeland Security.

(2) Whether any such deaths were caused by negligence or deliberate indifference by such personnel.

(3) Whether Department practice and procedures were properly followed and obeyed.

(4) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.

(5) Whether reports of such deaths were made under the Deaths in Custody Act.

SEC. 501. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.

The Secretary of Homeland Security shall ensure full coordination of border security efforts among agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner. In particular, the Secretary of Homeland Security shall—

(1) oversee and ensure the coordinated execution of border security operations and policy;

(2) establish a mechanism for sharing and coordinating intelligence information and analysis with other Federal, State, Tribal and local law enforcement agencies as appropriate to coordinate with, and prevent and combat, terrorism, border enforcement, customs and trade, immigration, human smuggling, human trafficking, and other issues that impact the Department of Homeland Security and Customs Enforcement and United States Customs and Border Protection;

(3) establish Department of Homeland Security centers of excellence (to include other Federal, State, Tribal and local law enforcement agencies as appropriate) as necessary to better coordinate border enforcement and the disruption and disruption of criminal organizations engaged in cross-border smuggling, money laundering, and immigration violations;
(A) enhance coordination between the border security and investigations missions within the Department by requiring that, with respect to cases involving violations of the customs and immigration laws of the United States, United States Customs and Border Protection coordinate with and refer all such cases to United States Immigration and Customs Enforcement;

(5) establish and maintain a comprehensive database of terrorism, narcotics, and other contraband that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, and code originating and resident aboard the aircraft or similar asset used in the aviation activity.

(6) develop and implement a comprehensive plan to protect the northern and southern land borders of the United States and address the different challenges each border face by—

(A) coordinating all Federal border security activities;

(B) improving communications and data sharing capabilities within the Department and with other Federal, State, local, tribal, and foreign law enforcement agencies on matters relating to border security; and

(C) providing input to relevant bilateral agreements to improve border functions, including ensuring security and promoting trade and tourism.

SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.

(a) ESTABLISHMENT.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

"(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the Office).

(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.

(c) MISSIONS.—

"(1) PRIMARY MISSION.—The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

"(2) SECONDARY MISSION.—The secondary mission of the Office shall be to assist other agencies to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

"(d) AIR AND MARINE OPERATIONS CENTER.—

"(I) IN GENERAL.—The Office shall operate and maintain the Air and Marine Operations Center in Riverside, California, or at such other facility of the Office as is designated by the Secretary.

"(II) DUTIES.—The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.

"(e) ACCESS TO INFORMATION.—The Office shall maintain and share information with other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be necessary, and take appropriate steps to ensure that personnel of that Office have access to the information gathered and analyzed by the Center.

"(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all aviation activities involving aircraft flights that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, and code originating and resident aboard the aircraft or similar asset used in the aviation activity, be excluded from the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

"(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever possible, to enable the purpose of timely coordination and conflict resolution of air missions by the Office.

"(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority of the Administrator of the Federal Aviation Administration to oversee, regulate, protect the safe and efficient use of the airspace of the United States.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ADDITIONAL ASSISTANT SECRETARY.—Section 103(a)(9) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(9)) is amended by striking "12" and inserting "13".

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act (6 U.S.C. 101) is amended by inserting after the item relating to section 430 the following new item:

"Sec. 431. Office of Air and Marine Operations.

SEC. 503. SHADOW WOLVES TRANSFER.

(a) TRANSFER OF EXISTING UNIT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to United States Immigration and Customs Enforcement all functions (including the personnel, assets, and liabilities attributable to such functions) of the Customs Patrol Officers unit operating on the Tokono O’Edam Indian reservation (commonly known as the "Shadow Wolves" unit).

(b) ESTABLISHMENT OF NEW UNITS.—The Secretary is authorized to establish within United States Immigration and Customs Enforcement additional units of Customs Patrol Officers in accordance with this section, as appropriate.

(c) DUTIES.—The Customs Patrol Officer unit transferred pursuant to subsection (a), and additional units established pursuant to subsection (b), shall operate on Indian lands by preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

(d) BASIC PAY FOR JOURNEYMEN OFFICERS.—A Customs Patrol Officer in a unit described in this section shall receive equivalent pay as a special agent of the United States Immigration and Customs Enforcement pursuant to the Department of Homeland Security’s Human Resources Management System established under section 841 of the Homeland Security Act (6 U.S.C. 411).

(e) SUPERVISION.—Each unit described in this section shall be supervised by a Chief Customs Patrol Officer, who shall have the same rank as a resident agent-in-charge of the Office of Investigations within United States Immigration and Customs Enforcement.

TITLE VI—TERRORIST AND CRIMINAL ALIENS

SEC. 601. REMOVAL OF TERRORIST ALIENS.

(A) EXPANSION OF REMOVAL.—

(i) AMENDMENTS.—The Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended—

(A) by striking ‘‘Authority General may not’’ and inserting ‘‘Secretary of Homeland Security may not’’;

(B) in subparagraph (B)—

(i) by inserting ‘‘or the Secretary’’ after ‘‘if the Attorney General’’;

(ii) by striking ‘‘or’’ in clause (ii); and

(iii) by striking the period at the end of clause (ii) and inserting ‘‘; or’’;

and (ii) by inserting after clause (ii) the following new clause:

‘‘(c) the alien is described in any subclass of section 212(a)(3)(B)(i) or section 212(a)(3)(F), unless, in the case only of an alien described in subclass (IV) or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States;’’;

and

(ii) in the third sentence, by inserting ‘‘or the Secretary of Homeland Security’’ after ‘‘Attorney General’’; and

(iii) by striking the last sentence.

(ii) Section 206(b)(3)(C)(i) of such Act (8 U.S.C. 1158(b)(2)(A)(vi)) is amended—

(A) by striking ‘‘subsection (I), (II), (III), (IV), or (V)’’ and inserting ‘‘or the Secretary’’;

(B) by striking ‘‘203(a)(4)’’ and inserting ‘‘212(a)(3)(F)’’; and

(C) by inserting ‘‘or (IX)’’ after ‘‘subsection (IV)’’.

(iii) Section 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amended—

(A) by striking ‘‘inadmissible under’’ and inserting ‘‘described in’’; and

(B) by striking ‘‘deportable under’’ and inserting ‘‘described in’’.

(iv) Section 240B(h)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is amended by striking ‘‘deportable under’’ and inserting ‘‘described in’’.

(v) Section 249 of such Act (8 U.S.C. 1259) is amended—

(A) by striking ‘‘inadmissible under’’ and inserting ‘‘described in’’; and

(B) in paragraph (4), by striking ‘‘deportable under’’ and inserting ‘‘described in’’.

(b) RETROACTIVE APPLICATION.—The amendments made by this section shall take effect on the date of enactment of this Act and sections 206(b)(3)(C)(i), 240A, 240B, 240C of the Immigration and Nationality Act, as so amended, shall apply to—

(1) aliens in removal, deportation, or exclusion proceedings;

(2) all applications pending on or filed after the date of the enactment of this Act; and

(c) with respect to aliens and applications described in paragraph (1) or (2), acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 602. DETENTION OF DANGEROUS ALIENS.

(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1231) is amended—

(i) in subsection (a), by striking ‘‘Authority General’’ and inserting ‘‘Secretary of Homeland Security’’ each place it appears;

(ii) in subsection (b), by adding after and below clause (iii) the following:

‘‘If, at that time, the alien is not in the custody of the Secretary (under the authority of this Act) or the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency, the removal period shall vest, and shall begin, on the date of the alien’s return to the custody of the Secretary.’’;
(3) by amending clause (ii) of subsection (a)(1)(B) to read as follows:

‘‘(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal order or determination that the stay of removal is no longer in effect.’’;

(4) by amending subparagraph (C) of subsection (a)(1) to read as follows:

‘‘(C) Period.—The removal period shall be extended beyond a period of 90 days and the alien may remain in deportation during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure, and

(iii) have not conspired or acted to prevent removal.

(5) in subsection (a)(2), by adding at the end thereof the following: ‘‘If a court orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary in the exercise of discretion may detain the alien during the pendency of such stay of removal.’’;

(6) in subsection (a)(3), by amending subparagraph (D) to read as follows:

‘‘(D) to obey reasonable restrictions on the alien’s conduct or activities, or perform affirmative actions and activities prescribed for aliens in section 212(d)(5), in order to prevent the alien from abandoning, or for the protection of the community, or for other purposes related to the enforcement of the immigration laws.’’;

(7) in subsection (a)(6), by striking ‘‘removal period and, if released,’’ and inserting ‘‘removal period, in the discretion of the Secretary, without out any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien’’;

(8) in subsection (b)(4), by amending paragraph (7) of subsection (a) as paragraph (10) and inserting after paragraph (8) of such subsection the following new paragraphs:

‘‘(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary, in the Secretary’s discretion, may parole the alien under section 212(d)(5) of this Act and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless the alien violates the conditions of the alien’s parole or the alien’s or the parolee’s travel or other documents necessary to the alien’s departure, or conspires or acts to prevent the alien’s removal subject to an order of removal’’;

(9) by adding at the end thereof the following new subsection:

‘‘(j) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—The procedures described in subsection (i) shall only apply with respect to an alien who—

(A) was lawfully admitted the most recent time the alien entered the United States or has otherwise effected an entry into the United States, and

(B) is not detained under paragraph (6).

(9) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision pursuant to paragraphs (6), (7), or (8) of this subsection shall be available exclusively in habeas corpus proceedings instituted in the United States District Court for the District of Columbia, and only if the alien has exhausted all administrative remedies (statutory and regulatory) available to the alien as of right; and

(9) by adding at the end thereof the following new subsection:

‘‘(k) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—

‘‘(1) APPLICATION.—The procedures described in this subsection apply in the case of an alien described in subsection (a)(8).

‘‘(2) REMOVAL.—If an alien who fully cooperates with removal—

‘‘(A) IN GENERAL.—The Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions for aliens who—

(i) have made substantial efforts to comply with their removal orders;

(ii) have complied with the Secretary’s efforts to carry out the removal orders, including making timely application in good faith for travel or other documents necessary to the alien’s departure, and

(iii) have not conspired or acted to prevent removal.

‘‘(B) DETERMINATION.—The Secretary shall make a determination whether to release an alien prior to the removal period in accordance with paragraphs (3) and (4). The determination—

(i) shall include consideration of any evidence or information submitted by the alien or the agency of other Federal agency and any other information available to the Secretary permitting the ability to remove the alien.

(3) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD.—

‘‘(A) INITIAL 90 DAY PERIOD.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in subsection (a)(3)).

‘‘(B) EXTENSION.—

(i) IN GENERAL.—The Secretary shall make a determination whether to release an alien after the removal period in accordance with paragraphs (3) and (4). The determination—

(ii) shall include consideration of any evidence or information submitted by the alien or the agency of any other Federal agency and any other information available to the Secretary permitting the ability to remove the alien.

(iii) D ELEGATION.—If the Secretary desires the authority to detain the alien beyond the removal period for reasons specified in clause (ii), the Secretary may delegate the authority to detain the alien to an immigration judge.

(iv) R EAPPLICATION.—If, after release, the alien is re-detained or released after a hearing, the Secretary in the exercise of discretion may decide not to apply the conditions specified in clause (ii) to the alien.

(5) RELEASE ON CONDITIONS.—

‘‘(A) IN GENERAL.—The Secretary shall establish an administrative removal process to determine whether the alien should be released on conditions for aliens who—

(i) have made all reasonable efforts to comply with their removal orders;

(ii) have complied with the Secretary’s efforts to carry out the removal orders, including making timely application in good faith for travel or other documents necessary to the alien’s departure, and

(iii) have not conspired or acted to prevent removal.

‘‘(B) DETERMINATION.—The Secretary shall make a determination whether to release an alien prior to the removal period in accordance with paragraphs (3) and (4). The determination—

(i) shall include consideration of any evidence or information submitted by the alien or the agency of any other Federal agency and any other information available to the Secretary permitting the ability to remove the alien.

(ii) R ENEWAL.—The Secretary may renew a certification under paragraph (4)(A) every six months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under such paragraph.

(iii) D ELEGATION.—Notwithstanding section 103, the authority to make or renew a certification described in clause (ii), (iii), or (vi) of paragraph (4)(A) below the level of the Assistant Secretary for Immigration and Customs Enforcement, and

(iv) H EARING.—The Secretary may request that the Attorney General provide for a hearing to make the determination described in clause (iii)(II) of paragraph (4)(B).

(6) CONDITIONS FOR EXTENSION.—The conditions for continuation of detention are any of the following:

‘‘(A) The Secretary determines that there is a significant likelihood that the alien—

(i) will be removed in the reasonably foreseeable future; or

(ii) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien’s failure or refusal to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure, or

(iii) have not conspired or acted to prevent removal.

‘‘(B) The Secretary certifies in writing any of the following:

(i) In consultation with the Secretary of Health and Human Services, the alien has a highly contagious disease that poses a threat to public safety;

(ii) After receipt of a written recommendation from the Secretary of State, the release of the alien is likely to have serious adverse foreign policy consequences for the United States.

(iii) Based on information available to the Secretary (including available information from the intelligence community), it is reasonably foreseeable that the alien’s removal order is likely to lead to the death of another U.S. citizen.

(iv) the alien’s release will threaten the safety or security of the United States or its territories.

‘‘(C) Pending a determination under subparagraph (B), so long as the Secretary has initiated an administrative removal process no later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(3)).

‘‘(D) RELEASE ON CONDITION.—If the Secretary determines that an alien should be released from detention, the Secretary in the exercise of discretion may impose conditions on release as provided in subsection (a)(3).

‘‘(E) REMOVAL.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to depart in the alien’s removal from the United States, or in any event, the Secretary determines that the alien can be detained under paragraph (1). Paragraphs (6) that apply to the movement of a detained alien returned to custody pursuant to this paragraph, as if the removal period terminated on the day of the readmittance of the alien.

(7) CERTAIN ALIENS WHO HAS BEEN EFFECTED ENTRY.—If an alien who has effected an entry into the United States has been lawfully admitted or paroled into the United States or has otherwise entered the United States, the immigration judge may promptly and immediately order the alien removed without an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the immigration judge does not certify the alien for removal, the immigration judge shall apply the procedures described in subsection (i) or (ii) of paragraph (4)(A) below the level of the Assistant Secretary for Immigration and Customs Enforcement, and

(8) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as amended, shall apply to—

(1) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of enactment of this Act; and

(2) acts and conditions occurring or existing before, on, or after the date of enactment of this Act.

SEC. 403. INCREASE IN CRIMINAL PENALTIES.

Section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended—

(1) in subsection (a)(1)—

(2) by striking ‘‘deportation’’ and inserting ‘‘deportation, removal, or denial of admission’’.
(A) in the matter before subparagraph (A), by inserting ‘‘212(a)’’ after ‘‘section 237(a)’’; and
(B) by striking ‘‘imprisoned not more than four years’’ and inserting ‘‘for less than six months or more than five years’’;

and

(2) in subsection (b)—

(A) by striking ‘‘not more than $1,000’’ and inserting ‘‘under title 18, United States Code’’;

and

(B) by striking ‘‘for not more than one year’’ and inserting ‘‘for not less than six months or more than five years’’;

and

(3) in paragraph (2), by striking ‘‘(a)’’ and the last sentence, by inserting ‘‘after “Attorney General” each place it appears;’’ in paragraph (2), by striking ‘‘Attorney General, in his discretion, waive the application of subsection (a)(2)’’ and inserting ‘‘The Attorney General or the Secretary of Homeland Security, in the discretion of the Attorney General or such Secretary, waive the application of subparagraph (A)(i)(I), (B), (D), (E), (K), and (L) of subsection (a)(2);’’

(4) in paragraph (3), by striking ‘‘as he’’ and inserting ‘‘as the Attorney General or the Secretary’’;

(5) in the second sentence, by striking ‘‘criminal acts involving torture and inserting ‘‘criminal acts involving torture, or an aggravated felony’’;’’

and

(6) in the third sentence, by striking ‘‘if either since the date of such admission the alien has been convicted of an aggravated felony or the alien’’ and inserting ‘‘if since the date of such admission the alien’’;

(a) EXCLUSION BASED ON FRAUDULENT DOCUMENTS, UNLAWFUL PROCUREMENT OF CITIZENSHIP, AND CRIME OF DOMESTIC VIOLENCE.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following new subparagraphs:

‘‘(J) AGGRAVATED FELONY.—Any alien who is convicted of an aggravated felony at any time is inadmissible.

(K) UNLAWFUL PROCUREMENT OF CITIZENSHIP.—Any alien who has committed, or who admits committing acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) subsection (a) or (b) of section 1425 of title 18, United States Code.

(L) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS; CRIMES AGAINST CHILDREN.—

(i) DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE.—In GENERAL.—Subject to subsection (I), any alien who at any time is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or an act of child abuse for which the person is not a or child abandonment is inadmissible.

(ii) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—Subclause (I) shall not apply to any alien described in section 212(a)(7)(A).

(iii) CRIME OF DOMESTIC VIOLENCE DEFINED.—For purposes of subparagraph (I), the term ‘‘crime of domestic violence’’ means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

(2) EXCLUSION BASED ON PROTECTION ORDERS.—

(A) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in violent or threatening acts of domestic violence, including temporary or final protective orders issued by civil or criminal courts (other than support or child custody orders or provisions) within the jurisdiction by which the protection order was issued is inadmissible.

(B) WAIVER AUTHORITY.—Section 212(h) of such Act (8 U.S.C. 1182(h)) is amended—

(1) by striking ‘‘The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), (E), and (L) of subsection (a)(2)’’ and inserting ‘‘The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or such Secretary, waive the application of subparagraph (A)(i)(I), (B), (D), (E), (K), and (L) of subsection (a)(2);’’

(2) in paragraphs (1)(A) and (1)(B) and the last sentence, by inserting ‘‘or the Secretary’’ after ‘‘Attorney General’’ each place it appears;’’

(3) in paragraph (2), by striking ‘‘Attorney General, in his discretion, may in his discretion, waive the application of subsection (a)(2)’’ and inserting ‘‘The Attorney General or, in his discretion, may, in the discretion of the Attorney General or such Secretary, waive the application of subsection (a)(2);’’

(4) in paragraph (3), by striking ‘‘as he’’ and inserting ‘‘as the Attorney General or the Secretary’’;

(5) in the second sentence, by striking ‘‘criminal acts involving torture and inserting ‘‘criminal acts involving torture, or an aggravated felony’’;’’

and

(6) in the third sentence, by striking ‘‘if either since the date of such admission the alien has been convicted of an aggravated felony or the alien’’ and inserting ‘‘if since the date of such admission the alien’’;

(b) E FFECTIVE DATE.—The amendments made by this section shall apply to aliens seeking admission the alien, or the Secretary or the Attorney General or the Secretary, for purposes of preventing violent or threatening acts of domestic violence, including temporary or final protective orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

SEC. 605. REMOVING DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is amended—

(1) by striking ‘‘The Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is amended by adding at the end the following

(2) In addition, the payment made by subsection (a) shall take effect on the date of the convictions entered before, on, or after such date.

(c) USE OF FUNDS.—Funds provided under this section shall be payable directly to participating States and communities for the purpose of employing and training personnel, equipment, and, subject to paragraph (2), the construction, maintenance, and operation of detection facilities to detect and apprehend aliens who are unlawfully present in the United States. For purposes of this section, an alien is unlawfully present in the United States if the alien is present in the United States and is not authorized to be in the United States. The Act shall be implemented in a manner that takes into account the geographic concentration of unlawful presence in the United States.
present in the United States, and such alien shall, upon such determination, be deemed to be in Federal custody. In order for costs to be eligible for payment, the Sheriff making such application shall personally certify under oath that all costs submitted in the application for reimbursement or advance payment meet the requirements of this section and are reasonable and necessary. Such costs shall be subject to audit by the Inspector General of the Federal law enforcement officials determine are unlawfully present in the United States, shall be immediately delivered to Federal law enforcement officials. In accordance with subsection (e)(1), an alien who is in the custody of a Sheriff shall be deemed to be a Federal prisoner and in Federal custody.

(1) REGULATIONS.—The Attorney General shall issue, on an interim final basis, regulations not later than 60 days after the date of the enactment of this Act—

(a) In general.—The Attorney General shall promulgate regulations specifying the criteria under which the Attorney General makes a determination that a group or association constitutes a criminal street gang under subsection (g) of section 1182(a)(2), as amended by section 604(b), is a serious drug offense, and is a crime of violence, as defined in section 16 of title 18, United States Code.

(b) Period of designation.—The Attorney General shall cease to have effect upon an Act of Congress disapproving such designation.

(c) Record.—In making a determination under subsection (g), the Attorney General shall create an administrative record.

(d) Period of designation.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (b).

(2) AUDIT.—Any revocation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(3) RECORD.—In making a determination under subsection (g), the Attorney General shall create an administrative record.

(4) DETERMINATION.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (b).

(5) PERIOD OF DESIGNATION.—A designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(6) REVOCATION OF DESIGNATION UPON PETITION.—

(c) To congressional leaders.—Seven days after making a designation under this subsection, the Attorney General shall notify the Speaker and Majority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate, of the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1) with respect to that group or association, and the factual basis therefor.

(d) Publication in Federal Register.—The Attorney General shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(e) EFFECT OF DESIGNATION.—Any designation under this subsection shall take effect upon publication under subparagraph (A)(i).

(f) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(g) RECORD.—In making a determination under subsection (g), the Attorney General shall create an administrative record.

(h) PERIOD OF DESIGNATION.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (b).

(i) REVIEW OF DESIGNATION UPON PETITION.—

(1) In general.—The Attorney General shall review the designation of a criminal street gang under this subsection not less than 3 years after the date of the determination made under clause (ii) on any petition for revocation.

(2) Scope.—The Attorney General shall review the designation of a criminal street gang under this subsection not less than 3 years after the date of the determination made under clause (ii) on any petition for revocation. If a review does not take place within 3 years after a petition for revocation, the Attorney General shall make a determination as to such revocation.

(3) Period of designation.—A designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(4) DETERMINATION.—If the Attorney General has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(5) Petition Period.—For purposes of clause (i)—

(I) if the designated gang or association has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on any petition for revocation;

(II) if the designated gang or association has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on any petition for revocation;

(6) PROCEDURES.—Any criminal street gang that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant criteria described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to that gang is warranted.

(7) DETERMINATION.—

(I) In general.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Attorney General shall make a determination as to such revocation.

(II) Public notice.—A determination made by the Attorney General under this clause shall be published in the Federal Register.

(III) Other procedures.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

(8) OTHER REVIEW OF DESIGNATION.—

(I) In general.—If in a 5-year period no review has taken place under subparagraph (B), the Attorney General shall review the designation of the criminal street gang in order to determine whether such designation should be revoked pursuant to paragraph (6).

(II) Procedures.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures prescribed by the Attorney General.

(9) Effect of revocation.—The Attorney General shall make a determination as to such revocation.

(10) Procedures.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

(II) Other procedures.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).
‘(ii) PUBLICATION OF RESULTS OF REVIEW.—
The Attorney General shall publish any determina-
tion made pursuant to this subparagraph in the Federal Register.

‘(g) EFFECTIVE DATE OF ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

‘(h) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

‘(1) IN GENERAL.—The Attorney General may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon a showing of the existence of change in circumstances conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Attorney General finds that the circumstances were the basis for the designation held by the Attorney General in the United States Court of Appeals for the District of Columbia Circuit.

‘(2) JUDICIAL REVIEW OF REVOCATION.—

‘(A) Scope of Review.—The courts shall have jurisdiction to review any finding under subparagraph (B) that an alien is described in section 208(b)(2)(A)(i) or is a ‘to an alien’ by inserting ‘who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is after’ ‘to an alien’.

‘(B) Procedure.—The procedural requirements of paragraphs (2) and (3) shall apply to any revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

‘(i) EFFECT OF REVOCATION.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

‘(j) USE OF DESIGNATION IN HEARING.—If a designation under this subsection has become effective under paragraph (2) or (5), the Attorney General may, if permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection.

‘(k) JUDICIAL REVIEW OF DESIGNATION.—

‘(1) IN GENERAL.—Not later than 30 days after the designation in the United States Court of Appeals for the District of Columbia Circuit.

‘(2) SCOPE OF REVIEW.—The Court shall hold unlawful and set aside a designation the court finds to be—

‘(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

‘(B) contrary to constitutional right, power, privilege, or immunity;

‘(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

‘(D) an abuse of discretion in the administrative record taken as a whole;

‘(E) not in accord with the procedures required by law.

‘(3) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order staying the designation.

‘(c) RELEVANT COMMITTEE DEFINED.—As used in this section, the term ‘relevant committee’ means the Committees on the Judiciary of the House of Representatives and of the Senate.

‘(2) CLERICAL AMENDMENT.—The table of contents of section 208 of Act (8 U.S.C. 1518) is amended by inserting after the item relating to section 208, the following:

“Sec. 219A. Designation of criminal street gangs.”

(d) MANDATORY DETENTION OF CRIMINAL STREET GANG MEMBERS.—

“(1) Definition.—Section 226(c)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)(D)) is amended—

“(A) by inserting ‘or 212(a)(2)(M) after ‘212(a)(2)(F);’

“(B) by inserting ‘237(a)(2)(F) or before ‘237(a)(2)(F)’;

“(2) ANNUAL REPORT.—Not later than March 1 of each year (2 calendar years after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by this subsection have become effective.

“(3) EFFECTIVE DATE.—This subsection and the amendments made by this subsection are effective as of the date of enactment of this Act and shall apply to aliens detained on or after such date.

‘(e) INELIGIBILITY OF ALIEN STREET GANG MEMBERS FROM PROTECTION FROM REMOVAL AND ASYLUM.—

‘(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(B)) is amended by inserting ‘who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is after’ ‘to an alien’.

‘(2) INELIGIBILITY FOR ASYLUM.—Section 209(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is amended—

“(A) in clause (v), by striking ‘or’ at the end;

“(B) by redesigning clause (v) as clause (vii); and

“(C) by inserting after clause (v) the following:

“(vii) the alien is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) relating to participation in criminal street gangs); or’;

‘(3) DENIAL OF REVIEW OF DETERMINATION OF INELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—Section 208(g)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1158(g)(2)(C)) is amended by adding at the end the following:

“(C) LIMITATION ON JUDICIAL REVIEW.—There shall be no judicial review of any finding under subparagraph (B) that an alien is described in section 208(b)(2)(A)(i) or is a to an alien’.

‘(4) JUDICIAL REVIEW INVOKED.—The amendments made by this subsection are effective as of the date of enactment of this Act and shall apply to all applications pending on or after such date.

‘(5) EFFECTIVE DATE.—The amendments made by this section are effective as of the date on which an alien referred to in section 237(a)(2)(F)(i) or who is described in section 237(a)(2)(F)(i) or who is after’ ‘to an alien’.

‘(f) USE OF DESIGNATION IN HEARING.—If a designation under this subsection has become effective under paragraph (2) or (5), the Attorney General may, if permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection.

‘(g) JUDICIAL REVIEW OF DESIGNATION.—

‘(1) IN GENERAL.—Not later than 30 days after the designation in the United States Court of Appeals for the District of Columbia Circuit.

‘(2) SCOPE OF REVIEW.—The Court shall hold unlawful and set aside a designation the court finds to be—

‘(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

‘(B) contrary to constitutional right, power, privilege, or immunity;

‘(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

‘(D) an abuse of discretion in the administrative record taken as a whole;

‘(E) not in accord with the procedures required by law.

‘(3) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order staying the designation.

‘(c) RELEVANT COMMITTEE DEFINED.—As used in this section, the term ‘relevant committee’ means the Committees on the Judiciary of the House of Representatives and of the Senate.

‘(2) CLERICAL AMENDMENT.—The table of contents of section 4 of Act (8 U.S.C. 1185) is amended by inserting after the item relating to section 4, the following:

“Sec. 4. Provisions of law referred to in section 310 of the Immigration and Nationality Act (8 U.S.C. 1105a) are each amended by—

“(A) inserting ‘in lieu of removal proceedings under’ before ‘in lieu of removal proceedings under’;

“(B) by inserting ‘, after the date specified in paragraph (1) and inserting ‘or any other Act:’ before ‘or any other Act’;

“(C) by inserting ‘, and’ before ‘and’; and

“(D) by inserting ‘, and’ before ‘and’.

‘(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date specified in the enactment of this Act, shall apply to any act that is done before such date, and shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed on or after, such date.

‘SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURIT Y GROUNDS.—

‘(a) IN GENERAL.—Section 238(b) of the Immigration and Nationality Act (8 U.S.C. 1228(b)) is amended—

“(1) in paragraph (1)—

“(A) by striking ‘Attorney General’ and inserting ‘Secretary of Homeland Security in the exercise of discretion’; and

“(B) by striking ‘set forth in this subsection or’ and inserting ‘set in this subsection, in lieu of removal proceedings under’;

“(2) in paragraph (3), by striking ‘paragraph (1) of such section’ and inserting ‘paragraph (1) or (2)’; and

“(3) by striking ‘Attorney General each place it appears in paragraphs (2) and (4) and inserting ‘Secretary of Homeland Security’;

‘(b) IN GENERAL.—The Attorney General may grant in the Attorney General’s discretion and
(d) **Effective Dates.**—The amendments made by subsection (a) and (b) shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, or failure to advise the alien of the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.

(2) **Effective Dates.**—The amendments made by subsection (a) shall apply to any act that occurred before, on, or after the date of the enactment of this Act and shall apply to any matter under the immigration laws pending on, or filed on or after, such date.

**SECTION 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE IN CHANGE IN INADMISSIBILITY FOR TERRORISTS UNDER REAL ID ACT.**

Effective as if included in the enactment of Public Law 109–13, section 103(d)(1) of the REAL ID Act (division B of such Public Law) is amended by inserting “deportation, and exclusion” after “removal”.

**SECTION 612. BAR TO GOOD MORAL CHARACTER.**

(a) **In General.**—Section 101(f)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(f)(1)) is amended—

(1) by inserting after paragraph (1) the following:

“(C) is not eligible for a waiver of inadmissibility if—

(A) has not been admitted or paroled;

(B) has not been found to have a credible fear of persecution pursuant to the procedures described in section 208 of the Social Security Act; or

(C) is not a citizen of a country from which immigration is temporarily suspended.

(b) **Effective Dates.**—The provisions of this section, in lieu of removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1227(a)), as amended by this section, shall be effective—

(1) before, on, or after such date; or

(2) one who the Secretary of Homeland Security or the Attorney General determines, in the exercise of discretion, to be a danger to national security or public safety, is not eligible for a suspension of removal, or a nonimmigrant visa or nonimmigrant status.

**SECTION 613. STRENGTHENING DEFINITIONS OF ‘AGGRAVATED FELONY’ AND ‘CONVICTION’.**

(a) **In General.**—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—

(1) by amending subparagraph (A) of paragraph (43) to read as follows:

“(A) murder, manslaughter, homicide, rape, or any sexual abuse of a minor, whether or not the conduct charged is a crime, if evidence extrinsic to the record of conviction; or

(2) in paragraph (48)(A), by inserting after and below clause (ii) the following:

“(ii) any instance of an aggravated felony or a conviction of an offense described in subsection (a) or (b) of section 1252(f) of such Act, and of all offenses that are enumerated in section 1227(a)(2), as amended; or

(b) **Effective Dates.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to all aliens who are nationals of any country with respect to which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual’s identity and whether the individual is authorized to be employed and shall not be construed to be an extension of this Act or section 205(c)(2)(F) of the Social Security Act.
"(F) Responsibilities of the Secretary of Homeland Security.—(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), can and will identify and verify an individual's social security account number submitted by the employer or employer representative or number which are provided in an inquiry against such information maintained by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

(ii) When a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number, the Secretary of Homeland Security shall conduct an investigation, within the time periods specified in subparagraphs (B) and (C), into whether a fraudulent use of a social security account number has taken place. If the Secretary has selected a designee to establish and administer the verification system, the designee shall conduct the investigation in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including the telephone or electronic access number for attention in the secondary verification process described in subparagraph (C).

(iii) Retention of Verification System and Any Related Systems.—(A) in general.—The Secretary of Homeland Security shall update their information system in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including the telephone or electronic access number for attention in the secondary verification process described in subparagraph (C).

(b) Repeal of Provision Relating to Evaluation and Changes in Employment Verification.—Section 274a(d) (8 U.S.C. 1324a(d)) is repealed.

SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

Section 274a of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (a)(1) by striking “(A)” after “DEFENSE.” and, by adding at the end thereof the following:

(B) Failure to Seek and Obtain Verification.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(2), seeking verification of the identity and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring, the date specified in subsection (b)(2)(B) for previously hired individuals, or before the recruiting or referring commence, the defense under subsection (a)(1) shall not apply to the person or entity, and the person or entity shall be considered to apply with respect to any employment, except as provided in subsection (ii).

(2) Special Rule for Failure of Verification.—If such a person or entity in good faith makes an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanisms responds to non-responses and qualify for such defense.

(3) Failure to Obtain Verification.—If the person or entity has made the inquiry described in clause (i), and the Department of Homeland Security has not received in a timely manner an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (b)(7)(B) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.

(4) by amending section 274a(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(2)) to read as follows:

(A) in general.—The person or entity shall retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual or the date of the completion of verification of a previously hired individual and ending—

(i) in the case of the hiring of an individual, the later of—

(a) three years after the date of such hiring;

(b) one year after the date the individual’s employment is terminated;

(ii) in the case of the verification of a previously hired individual, the later of—

(a) three years after the date of the completion of verification;

(b) one year after the date the individual’s employment is terminated;

(iii) in the case of the verification of a previously hired individual, the later of—

(a) three years after the date of the completion of verification;

(b) one year after the date the individual’s employment is terminated;

(iv) in the case of the verification of a previously hired individual, the later of—

(A) make an inquiry, as provided in paragraphs (1) and (2), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in subsection (b)(2)(B) or, before the recruiting or referring commence, and

(B) in the case of the verifying of an individual or the latter of—

(iv) if the person or entity receives an appropriate verification of an individual’s identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system that indicates a final verification of such identity and work eligibility of the individual.

(C) IN GENERAL.—If the person or entity receives a tentative nonverification of an individual’s identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does
not contest the nonverification within the time period specified, the nonverification shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under this paragraph in accordance with the requirements of subsection (b).

(b) Final Verification or Nonverification Received.—If a final verification or nonverification is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under this paragraph in accordance with the requirements of subsection (b).

(c) Final Verification or Nonverification — Continued Employment After Final Verification or Nonverification.—If the verification system provides a final verification of employment eligibility of any individual employed by the person or entity, the person or entity may continue employment of the individual for any reason other than because of such a failure.

(d) Final Verification or Nonverification Received.—If a final verification or nonverification is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code which has been provided under this paragraph in accordance with the requirements of subsection (b).

(4) in subsection (a)(3), as amended by section 702, is further amended by striking "hiring," and inserting "hiring, employing," each place it appears.

(b) Employment Eligibility Verification for Previously Hired Individuals.—Section 274A(b) of such Act (8 U.S.C. 1324a(b)), as amended by section 701(a), is amended by adding after paragraph (10) the following new paragraph: "(11) in section 1016(e) of the Critical Infrastructure Protection Act of 2005.

(c) In the case of an employer with an average of at least 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced as follows: "(A) In the case of an employer with an average of at least 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced as follows: "(C) In the case of an employer with an average of less than $250 and not more than $2,000, and inserting "not less than $2,000; "(D) in subparagraph (4), by inserting "$1,000" and inserting "$2,000; "(E) in subparagraph (6), by inserting "$2,000"; "(F) in subparagraph (7), by inserting "$2,000"; and "(G) in subparagraph (8), by inserting "$2,000.

(d) Employment Eligibility Verification System for Previously Hired Individuals.—(4) for a violation of subsection (a)(1)(B) for hiring, employing, or referring for employment in the United States an individual who has not been previously subject to an inquiry by the person or entity by the date six years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

(ii) A person or entity is described in this clause if the employer being charged with a violation of subsection (a)(1)(B) for hiring, employing, or referring for employment in the United States an individual who has not been previously subject to an inquiry by the person or entity by the date six years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

(iii) All persons and entities other than those described in clause (ii) are subject to the terms and conditions of subsection (a)(1)(B).
not more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal or State law to the contrary.

SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) REPORT.

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Treasury, the Secretary of Homeland Security, and the Attorney General, shall submit a report to Congress that includes an evaluation of the following requirements and changes:

(A) A requirement that social security cards that are made of a durable plastic or similar material and that include an encrypted, machine-readable electronic identification strip and a digital photograph of the individual to whom the card is issued, be issued to each individual (whether or not a United States citizen)

(B) Security, and the Department of Justice, shall

(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not apply for any relief under this Act, regardless of the date that an application for such relief may have been filed.

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

(3) INDIVIDUAL DETERMINATIONS UNDER SECTION 241(a)(5).

(A) IN GENERAL.—Judicial review of determinations under section 241(a)(5) and its implementation is available in an action instituted under section 707 of the Act, in the United States Court of Appeals for the District of Columbia Circuit, but shall be limited, except as provided in subparagraph (B), to the following determinations:

(1) Whether such section, or any regulation issued to implement such section, is constitutional.

(ii) Whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General or the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this Act or is otherwise in violation of a statute or the Constitution.

(2) RELATED INDIVIDUAL DETERMINATIONS.—

If a person raises an action under subparagraph (A), the person may also raise in the same action the following issues:

(i) Whether the petitioner is an alien.

(3) UNLESS FOR ACTIONS.—Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(2) INDIVIDUAL DETERMINATIONS UNDER SECTION 242(a).—Judicial review of determinations under section 242(a) is available in an action instituted under subsection (a) of this section, but shall be limited to determinations of—

"(A) whether the alien is an alien;

(B) whether the alien was previously or re-entered, deported, or excluded;

"(C) whether the alien has since illegally entered the United States.

(4) SINGLE ACTION.—A person who files an action under paragraph (2) may not file an action under paragraph (3) or 242(a)."
SEC. 804. WITHHOLDING OF REMOVAL.

(a) IN GENERAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended—

(1) in subparagraph (A), by adding at the end the following: "The burden of proof is on the alien to establish that the alien’s life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat."); and

(2) in subparagraph (C), by striking "in determining whether an alien has demonstrated that the alien’s life or freedom would be threatened for a reason described in subparagraph (A) and included in a subsequent communication of this paragraph".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 101(c) of the REAL ID Act of 2005 (division B of Public Law 109-13).

SEC. 805. CERTIFICATE OF REVIEWABILITY.

(a) ALIEN’S BRIEF.—Section 242(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is amended by adding at the end the following new subparagraph:

"(D) CERTIFICATE.—

(i) At the alien’s request, the petition for review shall be assigned to a single court of appeals judge.

(ii) Unless that court of appeals judge or circuit justice states the grounds for the extension; or

(iii) A certificate of reviewability may issue under clause (ii) only if the alien has made a substantial showing that the petition for review is likely to be granted.

(iii) The court of appeals judge or circuit justice shall take action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge or circuit justice was assigned the petition for review, unless another period is established under clause (iv).

(iv) The judge or circuit justice may, on the judge’s or justice’s own motion or on the motion of a party, extend the 60-day period described in clause (iii) if—

(I) all parties to the proceeding agree to such extension; or

(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.

(iv) If no certificate of reviewability is issued before the period described in clause (iii), the petition for review shall be deemed denied, any stay or injunction on petitioner’s removal shall be dissolved without further action by the court or the government, and the alien may be removed.

(v) If a certificate of reviewability is issued under this paragraph, the period described in such certificate, including any extension under clause (iv), the petition for review shall be deemed denied, any stay or injunction on petitioner’s removal shall be dissolved without further action by the court or the government, and the alien may be removed.

(i) If a certificate of reviewability is issued under this paragraph, the period described in such certificate, including any extension under clause (iv), the petition for review shall be deemed denied, any stay or injunction on petitioner’s removal shall be dissolved without further action by the court or the government, and the alien may be removed.

(E) NO FURTHER REVIEW OF THE COURT OF APPEALS JUDGMENT NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The single court of appeals judge’s decision not to issue a certificate of reviewability, or the denial of a petition under subparagraph (D)(i), shall be the final decision for the court of appeals and shall not be reconsidered, reviewed, or reversed by the court of appeals through any mechanism or procedure.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions filed on or after the date that is 90 days after the date of the enactment of this Act.

SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1221(a)) is amended by adding at the end the following new paragraphs:

"(2) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer’s determination as to the admissibility of the alien at the port of entry into the United States; or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to visas issued on or after the date that is 90 days after the date of the enactment of this Act.

The Acting CHAIRMAN. No further amendment to the committee amendment is in order except those printed in part B of the report. Each further amendment to the amendment in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

PART B AMENDMENT NO. 1 OFFERED BY MR. CARTER

Mr. CARTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 1 printed in House Report 109-347 offered by Mr. CARTER of Texas:

In section 106, in the matter preceding paragraph (1), strike "communication capabilities" and insert "communication capabilities, including the specific use of satellite communications".

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. CARTER) and a Member opposed each will control 5 minutes.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

This amendment would ensure that the Secretary of Homeland Security would look at all technical solutions to find the best solution for effective two-way communication on the United States border. By specifically requiring the Department of Homeland Security to include satellite communications as part of this solution to curing the inefficiencies of existing communication tools on the border, Congress would be ensuring the consideration of the only proven communication tool that can maintain the constant connection to the Border Patrol officers in the field, thereby saving their lives and providing homeland security seamlessly and flawlessly.

In many instances during the recent natural disasters of hurricanes Katrina in Texas and Rita in Louisiana, satellite communications were the only reliable method of communication. Moreover, this technology has been used extensively by the U.S. military in inhospitable and remote areas of Afghanistan and Iraq. Satellite communication has proven its worth.

During the Katrina disaster, I had a conversation with the gentleman from Nevada (Mr. PORTER) about going down with a load of provisions to help folks down there. When he arrived at the town, he did not remember the name of the town, he ask if they had talked to FEMA and they said, yes, they gave us a phone number to call, but, unfortunately, our cell phones do not work, and our land lines are down so there is no phone in this town.

Mr. PORTER had his satellite phone with him. He shared his satellite phone with those disaster victims, and they were able to communicate with FEMA.

Given the unique characteristics of our Border Patrol and the technology would be specifically useful in alleviating many of the communication problems that currently exist and can be done in a very cost-effective way to the U.S. taxpayer. This amendment ensures that all available options would be considered instead of limiting the Border Patrol to outdated and frequently ineffective technology.

I ask my colleagues to support this amendment because it will greatly enhance the U.S. Border Patrol’s ability to protect our Nation’s borders and provide for their individual safety. Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Who claims time in opposition? Ms. ZOE LOFGREN of California. Mr. Chairman, although I do not oppose the amendment, I would note that we will support this amendment, and I would also like to yield 2 minutes to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Chairman, I rise today in support of my Texas colleague’s amendment, but against the bill with reservations. There are many aspects of this bill that I do not support. I believe it could improve security along the border. Every nation in the world should control their borders and know who is crossing their borders. That is why I co-sponsored the Border Security Act last Congress with our former colleague Jim Turner.

I believe we should prevent immigration officials from having to catch and release detainees because there are not enough detention beds and holding facilities. That is why I co-sponsored legislation that the gentleman from Texas (Mr. ORTIZ) and the gentleman from Texas (Mr. REYES) that would give us the number of beds we need.
However, I cannot support this bill in its current form.

Under this bill, approximately 11 million people in this country would become aggravated felons. If you think we have catch and release problems now, you will have an additional 11 million people that have to be detained under this legislation. There are not enough prisons to handle these numbers. I cannot imagine our country loading box cars with the estimated 10 to 12 million people who do not have documents showing they are legal. This brings visions of deportation and Nazi Germany and Stalin and the Soviet Union.

Currently, 40 percent of immigration detainees are held in Department of Homeland Security facilities; 60 percent of these detainees are in local jails under contract with the Federal Government. The Federal Government needs to take responsibility for holding all of these detainees, much less the concern we have about an additional 11 million.

It is estimated by making all these people felons there are approximately 3 million U.S. citizen children that would be impacted by having their parents or guardians detained or deported. This is something we need to review closely and make sure we are not making life harder for children that are U.S. citizens who happen to be born to undocumented parents.

Finally, this bill closes the door to the courthouse for many immigrants. Without judicial review, we cannot be certain that our laws are being enforced appropriately. I believe in increasing protection along our borders, realistically addressing the current undocumented population; but I also oppose a new guest worker program.

Mr. CARTER. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, let me commend the gentleman from Texas (Mr. CARTER) for this very fine amendment. It is important to the bill. It is a well-intentioned and well-drawn amendment. I am willing to accept the amendment.

I thank the gentleman for his thoughtful consideration and for all that he does on this very, very vital issue.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as I mentioned earlier, I do not oppose the amendment. Land line and cellular telecommunications can be severely disrupted in a time of natural disaster, and it is important to have satellite communications available so that they are a reliable alternative for first responders and others involved in natural disasters.

However, I would note that while I will be happy to vote "aye" on the amendment; we do not actually need this amendment to have the use of satellite communications. That is some thing that the administration could have done on its own. There are some other things that they ought to be doing that would really make a difference.

The U.S. Border Patrol needs additional agents, and we need new training for those agents. We need 2,000 additional agents in ICE and 250 additional detention officers. U.S. Marshals need 250 additional personnel and $50 million for vehicles, communications equipment, and border patrol equipment. U.S. Attorneys, we need 100 additional personnel on the southwest border and $30 million for additional office space. Why? We have talked about detention beds, but the issue is we need in the able to process. We cannot just hold people. We need to bring charges against them, those who have an arguable claim, and then adjudicate that claim; either deport them or find that their claim is a valid one.

We need additional immigration judges. We need 2,500 additional enforcement personnel in the Coast Guard, and we need 25,000 detention beds. We need 1,000 investigators for fraudulent schemes and documents. We need at least 100 helicopters and 250 power boats for the Border Patrol and at least one police-type motor vehicle for every three agents for the Border Patrol. We need enough portable communications equipment for all Border Patrol motor vehicles. We need hand-held global positioning systems for each Border Patrol agent.

We need night vision equipment for all Border Patrol agents working during hours of darkness. We need night vision equipment for all Border Patrol agents working during hours of darkness. We need body armor appropriate for the climate and risks faced by individual Border Patrol agents. We need to reestablish the Border Patrol anti-smuggling unit. And we need to establish specialized criminal investigations; one for the investigation of violations of immigration law, another for customs laws, and a third for ag laws.

We need to require foreign language training for Border Patrol agents in the Department of Homeland Security who come into contact with aliens who cross the border illegally.

Yes, this amendment is worth supporting, but we do not really need it to get satellite communications. We do need, however, to authorize the equipment and the personnel so we can enforce the laws at America’s borders both north and south. Unfortunately, the underlying bill before us does not do that. It is not a real enforcement measure.

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

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. CARTER).

The amendment was agreed to.

The Acting CHAIRMAN. The amendment was agreed to.

Mr. CARTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 2 printed in House Report 109-347 offered by Mr. GOHMERT of Texas:

At the end of section 109, add the following new subsection:

(e) ACTION BY INSPECTOR GENERAL.—In the event the Inspector General becomes aware of any improper conduct or wrongdoing in connection with the actions required under subsection (a), the Inspector General shall, as expeditiously as practicable, refer information related to such improper conduct or wrongdoing to the Secretary of Homeland Security or other appropriate official in the Department of Homeland Security for purposes of evaluating whether to suspend or debar the contractor.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. GOHMERT) and a Member opposed each will control 5 minutes.

Mr. CHAIRMAN recognizes the gentleman from Texas.

Mr. GOHMERT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to thank Chairman King of New York and Chairman Carter for their hard work on this important legislation. Some have said it seemed like it was spurn of the moment, but those of us who have spent hundreds of hours on this issue this year know otherwise and too up to be proud.

I would also like to thank Mr. Dreier for allowing me to bring this amendment up in the Rules Committee.

I will be brief, since my amendment is pretty straightforward. This amendment will help ensure that the Federal Government is doing business with ethical contractors. Section 109 of the bill requires the Inspector General to review contracts over $20 million. This review is to be sure that the contracts were properly competed.

My amendment adds a subsection that says that during this review if the Inspector General discovers any wrongdoing or misconduct, the Inspector General will refer this information to the Secretary of Homeland Security for purposes of evaluating whether suspension or debarment is warranted.

Some Members may be familiar with the Darlene Druyun case. She was a top Air Force acquisition official who awarded billions of dollars’ worth of contract to one particular defense contractor and all the while she was negotiating with that same defense contractor for a job for herself and her daughter. The officials at the company that negotiated her employment and she, herself, were debarred.

Some are familiar with Representative Cunningham. He did wrong, and he will and should be punished accordingly; but the contractors who competed illegally and unethically should also suffer.

This amendment helps address issues such as this as it requires the Inspector General to go forward with information...
The Acting CHAIRMAN (Mr. Simpson). Does the gentleman from California claim the time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition; although I do not oppose the amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman is recognized.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of this amendment. The Department of Homeland Security IG has exposed improper conduct or wrongdoing of contractors who maintain Federal contracts with the department, and I think this amendment is along the lines of trying to make sure that the American taxpayers are not going to get ripped off like they have been in the past.

Take a look at the level of fraud in contracting that has occurred in the Middle East, in Iraq; I mean, hundreds of thousand of dollars of stolen money and the stories that are coming out of the taxpayers being ripped off by contractors in the gulf region after Hurricane Katrina. I know that the record is not a good one in terms of this administration choosing contractors who will not cheat us. So I do think it is important to have this amendment, and I commend the Congressman for bringing this forward.

In June, the Homeland Security Committee heard testimony from Joel Gallay who is the acting Inspector General of GSA. Mr. Gallay provided a detailed account of significant deficiencies he discovered in evaluating the efficacy of ISIS, and of particular concern to the IG was the procurement of remote surveillance equipment, the lack of progress in implementing the system and what he called the chronic inattention to the proper administration of the contract.

The IG wrote that the program was severely hampered by ineffective management that led to waste, and the report showed deficiencies in the ISIS contract management and in the training of government officials responsible for implementing the program. Now, it is unfortunate that we need this amendment. We would like to think that our administration would not be inept; that they would have accountability; that they would know how to administer; and they would not have this rip-off of taxpayers that has been identified to the committee repeatedly. Unfortunately, that appears not to be the case, and therefore, I do support this amendment to try and stop this rip-off of the taxpayers.

As the philosopher George Santayana cautioned, Those who do not learn from history are condemned to repeat it.

I hope that this amendment will be adopted, and that will help us from continuing to see the rip-off of American taxpayers in the arena of the Department of Homeland Security.

Mr. GOHMERT. Mr. Chairman, I yield myself such time as I may consume.

I appreciate my colleague from California’s support on this amendment, and as the IG, I think she knows, this is an issue that knows no party boundaries, and so I am proud to stand with those who want to end this, and that would include Chairman KING.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. King).

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me time, and let me express my strong support for this amendment and thank the gentleman from Texas (Mr. GOHMERT) for the contribution he has made, for the dedication he brings to this issue.

I also would say, parenthetically, if someone with his accent and my accent are supporting this bill, it shows how extensive and wide-ranging the support is for this bill. It shows that all Americans, from one end of the country to the other, one accent to the other, stand behind a bill which is good, an amendment which really adds substantially to the bill and does provide the level of integrity and honesty and interaction that we need.

With that, I express my strong support for the gentleman’s amendment.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I would just note that the gentleman from Mississippi (Mr. THOMPSON), the ranking member of our full committee, worked very hard on this in collaboration with the majority. I would like to thank him for his extraordinary efforts on this, along with that of the author and the chairman.

As I say, we support this, although it is a sad day that it is so needed because of the poor administration at the department overall.

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

Mr. GOHMERT. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GOHMERT).

The amendment was agreed to.

PART B AMENDMENT NO. 3 OFFERED BY MR. SAM JOHNSON OF TEXAS

Mr. SAM JOHNSON of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

SEC. 118. SENSE OF CONGRESS REGARDING ENFORCEMENT OF IMMIGRATION LAWS.

(a) FINDINGS.—Congress finds the following:

(1) A primary duty of the Federal Government is to secure the homeland and ensure the safety of United States citizens and lawful residents.

(2) As a result of the terrorist attacks on September 11, 2001, perpetrated by al Qaida terrorists on United States soil, the United States is engaged in a Global War on Terrorism.

(3) According to the National Commission on Terrorist Attacks Upon the United States, up to 15 of the 9/11 hijackers could have been intercepted or deported through more diligent enforcement of immigration laws.

(4) Four years after those attacks, there is still a failure to secure the borders of the United States against illegal entry.

(5) The failure to enforce immigration laws in the interior of the United States means that illegal aliens face little or no risk of apprehension or removal once they are in the country.

(6) If illegal aliens can enter and remain in the United States with impunity, so, too, can terrorists enter and remain while they plan, rehearse, and then carry out their attacks.

(7) The failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching catastrophic or harmful attacks on United States soil.

(8) There are numerous immigration laws that are currently not being enforced.

(9) Immigration enforcement officers are often discouraged from enforcing the laws by superiors.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President, the Attorney General, Secretary of State, Secretary of Homeland Security, and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the United States, as enacted by Congress.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. SAM JOHNSON) and Mr. GINGRICH opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield myself 4 minutes.

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

My amendment expresses a sense of Congress that immigration laws enacted by Congress must be enforced.
This amendment sends a simple message from the Congress to the administration: Enforce the law.

We can debate how to solve the illegal immigration problem until we are blue in the face, and I see some very blue faces around the room, but if the laws are not being enforced, then it is just a bunch of hot air. I have got a four-page list of immigration laws in front of me that are currently being ignored. This is unacceptable. This non-enforcement must end. As the United States Congress must demand it right now.

Let me give my colleagues a couple of examples. In 2002, we enacted a law requiring implementation of a system known as Chimera. This means there will be information sharing from Federal databases in the intelligence community to any Federal official considering an immigrant’s admissibility or deportability. Well, you knew as you heard information sharing, it is not happening.

Did you know we have a law forbidding public colleges from giving in-state tuition to illegals unless they offer it to every citizen in the United States? It is going on in nine states. Federal law is being violated, and guess what, the Federal Government’s doing nothing about it.

Do you know that all registered aliens are required to notify DHS within 10 days of changing address? Failure to do so is a deportable offense. This has national security value, and it is not being enforced.

In 1996, we made a law requiring the Department of State to suspend all visas to any country who refuses to receive a national who has been deported from the United States. So, hypothetically, if China would not accept people we are deporting back to China, which they are, then the Federal Government is not allowed to issue any more visas to people coming from China. Even tanks we are not giving visas to people from China?

The list goes on and on. I will submit it for the Record at this point.

IMMIGRATION LAWS THE ADMINISTRATION IS NOT ENFORCING

ENHANCED BORDER SECURITY AND VISA ENTRY

Integration of all databases and data systems maintained by [DHS] that process or contain information on aliens (§302).

DHS shall have no plans to accomplish this.

Implementation of an interoperable electronic data system (also known as the “Chimera” system) to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is needed to determine whether to issue a visa or to determine the admissibility or deportability of an alien (§302).

Chimera is to incorporate the integrated alien data system;

information in Chimera must be readily and easily accessible—

to any consular officer responsible for the issuance of visas;

to any Federal officer responsible for determining an alien’s admissibility to or deportability from the United States; and

to any Federal law enforcement or intelligence officer determined by regulation to be responsible for the investigation or identification of aliens. 

DHS has no plan to accomplish this. Make interoperable all security databases relevant to making determinations of admissibility under section 212 of the Immigration and Nationality Act (§303).

DHS has no plan to accomplish this. Not later than October 26, 2004, DHS and the State Department shall issue to aliens only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers (§303).

DHS still issues easily counterfeited temporary passports that use biometric identifiers. Not later than October 26, 2004, the Attorney General, in consultation with the Secretary of State, shall establish a policy (§303).

About 500 readers have been put in place in only some POEs, and all are in secondary, not primary, inspection.

Beginning upon implementation of Chimera, not later than receiving a report of the loss or theft of a United States or foreign passport, DHS and State, as appropriate, shall enter into Chimera the corresponding identification number for every lost or stolen passport (§303).

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

An alien presenting a border crossing identification card (i.e., a laser visa) is not permitted to cross into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien (§304).

The Administration exempted Mexico from participation in US-VISIT, so biometrics are not being verified and border crossing cards are merely inspected visually.

Process all aliens through US-VISIT (the automated entry-exit control system) as an alternative to “collection of a surety for each foreign-born alien departing the United States and match the records of departure with the record of the alien’s arrival in the United States” (§119).

Only about 20 percent of nonimmigrants are being processed through the entry part of US-VISIT; the other 80 percent of nonimmigrants have been exempted; immigrants (lawful permanent residents) also have been exempted; and the exit part of the system is still being tested in pilots at a handful of POEs.

Aliens who have resided illegally in the United States for more than six months but less than one year and voluntarily departed may be barred from re-entry for ten years; aliens who have resided illegally in the United States for more than one year are barred from re-entry for ten years (§301).

Only about 12,000 aliens were subjected to these bars on re-entry during the first four years after this provision took effect: it is estimated that the bars could have applied to up to 2.5 million aliens during that period.

Mandatory detention pending removal of all aggravated felons and other aliens who are inadmissible or deportable due to criminal convictions (§303).

Limited detention space and mismanagement of budgets result in criminal aliens being released from detention prior to removal: more than 80,000 criminal aliens are free in American communities.

Mandatory detention of aliens from the time they are issued a final order of removal until the alien is actually removed or until 90 days have passed if the alien cannot be removed within that period (§305).

In 2004, almost half (34,800) of the more than 75,000 “other than Mexicans” apprehended by the Border Patrol were released on their own recognizance removal: an estimated 90 percent of nondetained aliens abscond after being issued an order of removal.

Upon notification by DHS or the AG that a foreign government refuses or unreasonably delays the return a national of that country who is ordered removed from the United States, DHS may suspend the issuance of immigrant and/or nonimmigrant visas to nationals of that country (§307).

A handful of governments routinely refuse to issue travel documents to their nationals who have been ordered removed from the United States, but this provision is not invoked.

Each Department of the Federal Government shall elect to participate in a pilot program to verify employment of all of its employees and shall comply with the terms and conditions of such election (§402).

The 1996 law created three different pilot programs from which agencies could choose; when two of them were allowed to lapse and only one, the Basic Pilot, was extended, agencies using one of the lapsed pilots simply stopped using it rather than sign up for the remaining one.

Public institutions of higher education may not offer in-state tuition to illegal aliens unless they also offer it to every citizen of the United States (§505).

Neither DHS nor the Justice Department has challenged any of the nine states that have passed laws that violate this, despite the fact that Federal law clearly supersedes state law in the area of immigration.

Alien seeking admission to the United States or a change of status who is likely to become a public charge or who is a public charge is excludable, if seeking admission, or removable, if already here and seeking adjustment of status (§501).

DHS has yet to come up with a definition of “public charge” to implement this provision.

Upon notification that a sponsored alien has received any means-tested public benefit, the entity (nongovernmental, Federal, state, local) that paid for the benefit shall request full reimbursement by the sponsor (§501).

One lawsuit seeking reimbursement has been filed, and it was filed by private citizens trying to force the Los Angeles public hospital system to seek reimbursement from sponsors: the case was dismissed on technical, not substantive, grounds.

States and localities may not adopt policies, formally or informally, that prohibit the receipt of funds from any Federal department or agency regarding the immigration status of individuals (sanctuary policies) (§602).

Neither of the two sanctuary states, Maine and New Mexico, nor any of the multitude of sanctuary cities have been challenged by DHS or DOJ for violating this provision: soon after this law passed, the City of New York challenged the law in court and the court upheld the law and ordered the City to rescind its sanctuary policy; instead, the City modified its policy slightly, but the Federal Government has not challenged it.

DHS shall respond to an inquiry by a Federal, State, or local government agency seeking to verify or ascertain the citizenship status of an individual within the jurisdiction of the agency for any purpose authorized by law (§602).
This law also required the establishment by then-INS of the Law Enforcement Support Center (LESC), which is available 24/7 to state and local police seeking information on aliens and citizenship; however, state and local police who contact ICE about illegal aliens they have taken into custody are routinely rebuffed and told to simply release the aliens.

IMMIGRATION AND NATIONALITY ACT

The Secretary of DHS is authorized to expand expedited removal procedures to any or all aliens who have not been admitted or paroled into the United States and who are not affirmatively shown to the satisfaction of an immigration officer that they have been physically present in the United States continuously for thirty days or longer (§ 235).

The Secretary has only recently used this authority to expand expedited removal to nine Border Patrol sectors. The fact that our Federal court system is clogged with appeals of removal orders—of the hundreds of cases filed in Federal court rose from just over 2,000 in 1994 to more than 14,500 in 2004—and the fact that the illegal alien population in the United States continues to grow would suggest that expedited removal needs to be expanded along the entire land border of the United States.

Once an alien is apprehended and removal proceedings are initiated, DHS may detain the alien on a minimum $1,500 bond, or release him on conditional parole (§ 236).

Since on estimated 90 percent of non-detainee aliens are released either after being issued an order of removal, and since DHS has the authority to detain aliens pending removal, it makes no sense that almost half (34,800) of the more than 75,000 aliens apprehended by the Border Patrol were released on their own recognizance pending removal in 2004.

Marriage fraud, used in the past by at least 25 percent of non-Mexican aliens to enter the United States, is a deportable offense (§ 214). 

Illegal aliens who are victims of domestic violence can obtain green cards through the Violence Against Women Act, but the individual is rarely prosecuted and even more rarely deported; as happened in New York City with Mayor Giuliani’s “broken-window policing,” stepped up enforcement of these “low priority” violations would begin to reassess the rule of law in our immigration system.

Failure of an alien intending to remain in the United States for thirty days or longer to apply for registration and fingerprinting during that thirty-day period is a deportable offense (§ 202).

Enforcement of this provision would be of obvious national security value, and it would send a clear message that security is our top priority.

All registered aliens are required to notify DHS within ten days of changing addresses; failure to do so is a deportable offense (§ 296).

This, too, has important national security value.

Any individual or entity that “encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such alien is not admissible to the United States, or inadmissible to the United States, to reside in the United States.” The same case can be made against banks that accept consular ID cards to open accounts or allow illegal aliens to use individual taxpayer ID numbers to get home loans.

It is unlawful to knowingly hire, recruit, or refer for a fee an alien who is not authorized to work in the United States, and it is unlawful to hire any individual without verifying the employment authorization of that individual, either through the I-9 process alone or combined with the Basic Pilot program (§ 274A).

While it is exceedingly difficult to establish that an employer knew an employee was illegal, it is not difficult to establish that an employer failed to complete the I-9 process; it is also not difficult to encourage employers to use the Basic Pilot to verify work eligibility.

Aliens who commit fraud, use false or altered documents, or make misrepresentations on applications for immigration benefits are ineligible for the benefits (§§ 232, 237, 340, among others).

Not only does USCIS grant benefits to aliens despite omissions of, and sometimes even evidence of, fraud or misrepresentation, ICE rarely investigates cases of alleged benefits fraud. USCIS estimates that ICE declines to investigate over 70 percent of the benefits fraud referrals it receives. It is exceedingly rare for either agency to attempt to rescind a benefit once it is granted.

Millions of new immigrants come to America every year, and the numbers are rising. Do you know why these numbers continue to increase? Because when we don’t enforce the laws, we send the message that we don’t take our laws seriously.

We don’t pass laws to be ignored. Join me in supporting this amendment. Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does the gentlewoman from California claim the time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition, but I will not oppose the gentleman’s amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman can claim the time in opposition.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I will note that the amendment does not really accomplish anything; although, I could not want not want to oppose enforcing the law.

The gentleman mentioned some things that are deficient in the administration of our immigration laws, and they are not new things.

Let me just give you an example on reporting a change of address. Do you know how that is done? You fill out a piece of paper, and you submit it. Do you think it is possible to actually find those pieces of paper, the millions of pieces of paper that are coming in and who is a legal permanent resident, you could file it, but no one will ever find it.

We mention often the terrorists that came into our country and did such damage to us on 9/11. You know what? Those people, most of them were not admissible to the United States, but the poor officer at the border, he did not know that. He could not know it because the poor person had information that would have told him that was on a piece of microfiche sitting in a bucket in Florida waiting to be translated into an actual database.

There is a lack of technology in the department, and nothing in this bill changes that.

Further, nothing in this bill orders the President to order his department to go out and get the people who promised to appear and then disappeared. Let us go find those people. Let us bring them to justice. Either they will be deported or they will have their day and find their remedy.

Nothing in this bill tells the department to go out and find the people who have been convicted of crimes, who were supposed to be deported, who instead were released from county jail or from State prison because the department failed to go pick them up. There is nothing in this bill that says, go out, check with the jail, find out who is a criminal alien and who is about to be released and deport them. There is nothing in there. There are no resources.

So what does this underlying bill do? The amendment is well-meaning. I am sure, but it accomplishes almost nothing. Nevertheless, it would be wrong to oppose it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentlewoman very much.

Let me just say, Mr. JOHNSON is a good friend from Texas, and I know that this sense of Congress reflects the attitude of the people of Texas and America that we should enforce the immigration laws. I am going to enthusiastically join and support him on this idea of enforcing the Nation’s immigration laws.

But what I do want to indicate is that this is building on some enforcement laws that we have had, and that is that, over the years, we have enacted 20 enforcement laws in the last 20 years. We have increased the Border Patrol budget by a factor of 10, but it has not been enough. We have tripled the number of agents, but we need to do more, and we have created a Department of Homeland Security.

What we have been able to do is write real, if you will, effective immigration law that brings in the comprehensive nature of immigration law which provides, if you will, an earned access to legalization and the building up the security of our borders by the enhancement of our Border Patrol agents, for example, scholarships, recruitment.
There is another amendment coming up about making sure that clothing comes from the right country. I think this is a good amendment, but I think that we can do better by looking at this from a comprehensive perspective and building and writing the kinds of laws that are effective. If you will, to ensure that we are enforcing those laws.

Ms. ZOE LOFGREN of California. Mr. Chairman, I reserve the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I thank the gentlewoman from Houston for her comments. I appreciate it.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. GOODE).

Mr. GOODE. Mr. Chairman, I want to thank the gentleman from Texas for introducing this amendment to this fine legislation. He recognizes that the failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching a catastrophic or harmful attack on the United States.

His amendment is a message to the executive branch: Please enforce the laws that we have now to stop illegal immigration. They will listen to the gentleman from Texas with his stature and patriotism. It will be a fine message.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I would simply note that this amendment will not really cure the problems in this bill. It will not get the resources. It will not make the administration do its job. It will not cure the incompetence and lack of performance of that we have seen at the borders, both borders, southern and northern, as well as our ports of entry.

It a good idea to enforce the laws. Unfortunately, the administration is not doing so. Nothing in this bill is going to help them do so.

Mr. Chairman, I yield the remainder of my time to the gentleman from California (Mr. BACA).

Mr. BACA. Mr. Chairman, I rise in opposition of H.R. 4437. I have nothing against this particular amendment, but I am totally against this legislation.

We are all about protecting our borders. We are all about enforcement, and we are about developing a comprehensive immigration reform legislation that really will impact our people, but this bill today, it is flawed. It is inconsistent with the American values.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield the remaining time to the gentleman from New York (Mr. KING), the chairman of the committee.

Mr. KING. Mr. Chairman, I just want to emphasize that I stand in strong support of his amendment. This is just one more example of the outstanding contributions to public service made by the gentleman from Texas. I support it and urge its adoption.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Texas (Mr. SAM JOHNSON).

The amendment was agreed to.

PART B AMENDMENT NO. 4 OFFERED BY MR. RENZI

Mr. RENZI. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

SEC. 118. SECURING ACCESS TO BORDER PATROL UNIFORMS.

Notwithstanding any other provision of law, all uniforms procured for the use of Border Patrol agents shall be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Arizona (Mr. RENZI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arizona.

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

Mr. Chairman, I begin by thanking the chairman of our Homeland Security Committee for his allowing to move forward on this amendment, and more so for the protection he is now about to provide to many of our Border Patrol agents. I rise today to offer an amendment that would require all the uniforms worn by our Border Patrol agents to be made in America.

Imagine yourself a Border Patrol agent who serves in harm’s way along this vast and violent border who dons the uniform of this Nation which is currently made in Mexico and which could easily fall into the wrong hands. As we speak, uniforms worn by our Border Patrol agents are manufactured in Mexico and could be easily lost or stolen or, worse yet, intentionally produced to undermine our border security efforts. These uniforms represent the law and order on our border, and allow our Border Patrol agents to be recognized. They would minimize the possibilities that they could be procured by smugglers, terrorists, or others who pose great risk to our agents.

In 1941, Congress passed the Berry amendment, which restricts the Department of Defense from procuring some military uniforms for national security purposes outside of them being manufactured in America. For over 60 years Congress has chosen to keep this policy in place, and yet every day our Border Patrol agents are besieged by armed human smugglers and drug traffickers and those who want to use lethal means to target our agents.

Just 2 years ago, the Border Patrol confiscated a smuggler’s vehicle down on the southwest border that was painted like a Border Patrol vehicle. While we may not be able to prevent individuals from painting trucks, we can surely offer them getting these uniforms and from these uniforms falling into the wrong hands. Our Border Patrol agents need to be able to take pride in the uniforms they wear. They need to be secure in the knowledge that when they are on the border protecting into the darkness protecting us and when they are trying to determine whether the individual approaching them is friend or foe, that these uniforms are not being used as a tool against them. When our agents wake up each morning, they need to see the American flag and the “Made in U.S.A.” label on their uniforms. I urge my colleagues to support this amendment.

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

The Acting CHAIRMAN. Who claims time in opposition to the amendment?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I claim the time in opposition, but I will not oppose it.

The Acting CHAIRMAN. Without objection, the gentlewoman may claim the time in opposition.

There was no objection.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to the distinguished gentleman that offered the amendment, that is why we have suggested that we can work on these issues in a bipartisan manner. I think we have a very reasonable amendment, and might I just say that the National Border Patrol Council supports this amendment because it involves officer and public safety.

Since early last year, the Border Patrol uniforms, including the patches, the identifying patches, have been made outside of the country. It would be quite simple for someone to bribe a low-paid factory worker or truck driver in order to procure a quantity of uniforms for the purpose of masquerading as a Border Patrol agent. Obviously this makes sense, and that is why part of the problem with the underlying bill is, frankly, that it is weighted down by the criminalizing of the undocumented and not focusing on the criminalizing of the criminals. This, in fact, is a very instructive amendment because it helps to ensure the sanctity of the Border Patrol officers’ uniform and their work. Inasmuch as the Border Patrol’s work is done at night and low-light surroundings, it would be nearly impossible for the genuine Border Patrol agents to spot the imposters until they were close enough to harm the agents if they had a false uniform. Likewise, members of the public could easily be foreclosed by believing the imposters had authority to stop and question them, and they could perpetrate crimes.
Mr. Chairman, I support this amendment, and I am delighted to yield such time as he may consume to my distinguished colleague from California (Mr. BACA).

Mr. BACA. Mr. Chairman, once again I stand in opposition to this legislation. This is not comprehensive legislation. We all believe that we could have stronger enforcement not only on our borders but also stronger enforcement in reference to what happened to immigrants, but basically this legislation is not a comprehensive educational law reform or immigration reform. It basically is deplorable legislation. It violates the 13th and 14th amendments of the Constitution. We are abolishing the Constitution that protects us. How can we alter the Constitution?

I must remind our colleagues that we are talking about individuals who have a human face, a senior, an adult, and a young child. So this legislation, instead of being 11 million undocumented workers are felons, are felons. Is that what America wants, to arrest and lock up 11 million immigrants? Are we going to have detention camps, concentration camps? What are we going to do with these 11 million individuals who would be designated as undocumented individuals? What happens to the children of individuals that will be labeled? They will be labeled, and they will have to carry that label the rest of their lives as either a felon or an individual who has a misdemeanor. When you have that label, you carry that label with you the rest of your life, and you are asking us to be productive individuals. What happens to those individuals that every day of their life some individual will tell them, well, you are the little individual, you are the criminal. We see a little white person looking, a little brown person stereotyping them and says, you are a felon, you are here in this country illegally. There is nothing to do with them being out here.

Let me tell you, this legislation is horrible, it is terrible, it is deplorable. We must stop this kind of legislation. We must develop comprehensive legislation. We must not have concentration camps; we must not kick our students out of school. What happens to a lot of our kids who are in our schools because the legislation will label them as a criminal? ADA funding that goes to our schools? What happens? Do we cut the support? Are we siding and abetting? When we go to church and we see someone in our church or a pew right next to us, do we then turn in someone because we assume that you are an undocumented worker? We will begin to do more profiling. We will begin to identify more individuals like myself and others to say, Are you legal or not legal here in the United States? And people who look a different color will not be asked to prove their identity.

This legislation is horrible. We should not support this kind of legislation. We should protect our Constitution.

Mr. RENZI. Mr. Chairman, I want to thank the gentleman for California. I do have respect for him. I think his passion on the issue has to do with the overall bill, while we are here discussing my amendment which relates to Border Patrol uniforms. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Chairman, I thank Mr. RENZI for his very thoughtful amendment, and I thank him for yielding the time.

Mr. Chairman, this is about Border Patrol uniforms, the amendment. Mr. Chairman, I rise today in strong support of this amendment. I know we need to take the necessary steps to ensure the Federal Government is producing sensitive goods such as U.S. Border Patrol uniforms in the United States to help alleviate this national security risk. After reading an Associated Press article in late November, I was shocked to learn that U.S. Border Patrol uniforms are not made in America.

The article states that agents and lawmakers are concerned about the consequences if the uniforms for agents who are involved in combating illegal immigration fall into the hands of criminals or terrorists. The article detailed some of the concerns I have been expressing for some time now.

For years now, we have been a stalwart supporter of strengthening the Berry amendment, which requires the Department of Defense to give preference to domestically produced and manufactured products, notably clothing, food, fabrics, and specialty medals. Soon I will reintroduce a bill that applies the Berry amendment guidelines to Department of Homeland Security procurement.

It is imperative that we remedy this issue to help protect our borders and deter terrorists or criminal acts. Not only is this an issue of national security but it would help our Nation’s economic security by maintaining a strong U.S. manufacturing base as well.

I commend Mr. RENZI for offering the amendment, and I look forward to working closely with him and my colleagues and the administration to ensure that we are doing everything that we can to protect America’s national security. I urge all my colleagues to support this important amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I want to acknowledge the fact that we could be doing more on this bill. Clearly, we want our Border Patrol agents to be well equipped and well uniformed. That is the missing part of this bill. The uniform “Made in the USA” is a good statement to make, but you cannot have Border Patrol agents without proper boots, helmets, body armor, night goggles, computers, and night goggles, computing power, and you cannot have them without recruitment, scholarship, and increased numbers to secure the border.

That is what we should be doing with the underlying bill, but I do support the amendment and just wish we could do more.

Mr. RENZI. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. KING), the new chairman of the Homeland Security Committee, who has stepped up to protect our Border Patrol agents and who championed this amendment.

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding time. There is no one who is not on the committee who has done more work than the gentleman from Arizona to really work on the issue of terrorism in the intelligence area, in the homeland security area, and I strongly support this amendment.

It is in keeping with the spirit of the law. It is in keeping in the spirit that we should be searching for as we try to stop illegal immigration, stand behind those on the borders who are protecting us against this massive increase of illegal immigrants.

So I am proud to stand by and endorse the amendment from Arizona.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. RENZI).

The amendment was agreed to.

PART B AMENDMENT NO. 5 OFFERED BY MR. CASTLE

Mr. CASTLE of Delaware. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

SHOULD READ "US-VISIT"

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a timeline for—

(1) equipping all land border ports of entry with the US-VisIt system;

(2) developing and deploying at all land border ports of entry the exit component of the US-VisIt system; and

(3) making interoperable all immigration screening systems operated by the Department of Homeland Security.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Delaware (Mr. CASTLE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Delaware.

Mr. CASTLE of Delaware. Mr. Chairman, I rise to offer this simple amendment to the legislation before us today. In the post-9/11 world, our primary concern has to be protecting terrorists from penetrating our borders. Chairman SENSEN- BRENNER’s dedication to fixing gaps in our security is commendable, and I am
proud to join him and Chairman King in improving our border security capabilities while allowing American citizens and legal immigrants to continue contributing to our economy.

Both Congress and the 9/11 Commission recognized the need for US-VISIT biometric entry and exit system as essential to preventing terrorists from entering the country through land borders, airports, and seaports. Currently, US-VISIT kiosks are deployed at most airports, and travelers submit biometric information, including digital fingerprints and a photograph, and the Department of Homeland Security screens the data against terrorist watch lists and criminal record databases.

Since its implementation, US-VISIT has caught more than 900 murderers, pedophiles, and other dangerous criminals attempting to enter the United States. Still, the system records only a fraction of foreign arrivals and does not yet record when foreign travelers leave the country. While US-VISIT is presently being used at some of the busiest border crossings, the Department has yet to deploy the tracking system at all land border ports of entry.

The development of the system’s exit component has also been slow; and thus our government does not yet have a reliable track of who is overstaying. In addition, the 9/11 Commission has also been slow; and our government does not yet have the tracking component has yet to deploy the tracking system at all land border ports of entry.

The Department of Homeland Security is already working on a plan to expand US-VISIT and eventually track every foreign visitor entering and leaving the country. My amendment would simply require the Department to update Congress on the progress of this plan by submitting a detailed time line for each of the land borders with the US-VISIT system, developing and deploying the exit component of the system at all land borders, and making all immigration screening systems operated by the Department compatible with one another.

Improving the quantity and quality of the information in US-VISIT will undoubtedly enhance our ability to better track and identify potential security threats to our Nation. The Department already has a plan to do this, and my amendment will ensure that Congress is updated on the status of this important process.

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

The Acting CHAIRMAN. Who claims time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I will not oppose the amendment, but I claim the time in opposition.

The Acting CHAIRMAN. Without objection, the gentlewoman from California is recognized for 5 minutes.

There was no objection.

Mr. KING of New York. Mr. Chairman, I will support the amendment, but I am under no illusion that the amendment will actually achieve what the author hopes. Over the years before there was a Department of Homeland Security, I strongly suggested to the then immigration service that we engage in a biometric study so that we would have a secure biometric template that could be deployed and would be both with our immigration screening systems and also with other databases. We were told by the National Institute of Standards and Technology that they could accomplish that in 6 months for about $2 million. Unfortunately, we never did it.

So we now have biometrics that are incompatible in various databases, law enforcement, immigration, and certain other databases that we have. Consequently, the system that we have on US-VISIT is not fully functional. I would like to note also that the databases that are utilized by US-VISIT are also not integrated. It is true, we have caught some people who have committed crimes who should not be admitted to the United States through US-VISIT, and I count that as a good thing. But the 9/11 Commission was looking at the need to stop terrorists. The problem is that US-VISIT is completely disconnected with our databases relative to terrorists, and I do not think this amendment is going to fix that.

I would also like to note that the amendment suggests that we accelerate, in my belief, the exit component of US-VISIT.

There is no exit component of the US-VISIT. Basically, it does not exist.

The situation with databases and technology in the department is simply dismal. We should be filing all immigration matters by biometrics so we do not have the template we currently have of names that sound similar, or, in some languages, first and last names get traded back and forth rather interchangeably. It is ridiculous that we have not done that; but it is not for lack of asking, urging and insisting.

And I will say something else about getting reports. I sit on the Homeland Security Committee. We are due so many reports by this department, I cannot even begin to count them. We are due the report. I believe, it was last June. We are due reports on cybersecurity; that is several years ago. The department basically thumb its nose at the United States Congress. It does not provide the reports. I believe, it is under a current law. I suppose hope springs internal, and we should ask again, but this resolution will not cure the massive arrogance and incompetence of the department.

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

Mr. CASTLE. Mr. Chairman, I yield myself the balance of my time.

I agree with almost everything that the gentlewoman from California has said about this particular system. I share her concerns. I appreciate her support for my amendment and Mr. King's support as well.

I think the whole business of biometrics and US-VISIT has tremendous potential that is not being realized. The reason I present this amendment is...
§ 118. SUSPENSION OF VISA WAIVER PROGRAM

(a) IN GENERAL.—Notwithstanding any other provision of law, the Visa Waiver Program established under section 217 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(12)) is hereby suspended until such time as the Secretary, for the reasons and after the procedures set forth in subparagraph (b), determines and certifies to Congress that—

(1) the automated entry-exit control system authorized under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1107) is fully operational.

(2) all United States ports of entry have functional biometric machine readers; and

(3) all nonimmigrants, including Border Crossing Card holders, are processed through the automated entry-exit control system.

(b) REPEAL.—Subparagraph (b) of section 217(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1107(a)(3)) is hereby repealed.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Georgia (Mr. Gingrey) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. Gingrey. Mr. Chairman, I believe that the Border Protection, Antiterorism, and Illegal Immigration Control Act of 2005 needs to address an loophole in our immigration system. I have introduced this amendment which suspends, not cancels, but suspends temporarily the Visa Waiver Program until the machine-readable and tamper-resistant machine-readable identification system mandated by the PATRIOT Act to be the cornerstone of the entry-exit system is fully operational.

Until we have the technical and human resources to secure our points of entry, we cannot afford to allow visitors to come to the United States without prescreening them prior to arrival. Despite the fact that the United Kingdom is one of our Nation’s closest friends and allies, the London subway bombings earlier this year were executed in part by British citizens with known ties to terrorism.

We know that terrorists like Zacharias Moussaoui and Richard Reid exploited the Visa Waiver Program to travel to the United States. Do we want individuals like these to fly to America unchecked and to attack our subway system in the name of terrorist groups like al Qaeda under the cloak of the Visa Waiver Program? Do we want French citizens with Islamic extremist mindsets to get a free pass through Customs? If not, we need to suspend this program until we are equipped to check the criminal and terrorist backgrounds of every visitor; large numbers at every point of entry, and to confirm the identity of each visitor using biometric identifiers.

The success and failure of the Visa Waiver Program can trace its roots back to 1986 when it was passed as part of the Immigration Reform Control Act. As many of my colleagues know, what we left undone in 1986 is in large part why we need to consider a new immigration reform law in 2005 that is consistent with the PATRIOT Act. The Visa Waiver Program was only designed to be a temporary program for a small and select group of nations. Today, 27 countries are eligible under visa waivers, opening the door widely for terrorists to enter our Nation. Mr. Chairman, for the PATRIOT Act to succeed we need to stop the Visa Waiver Program.

Yesterday, the United States USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 passed by a vote of 251-174, a strong endorsement for combating our Nation against terrorism. The PATRIOT Act acknowledges the problem of the Visa Waiver Program, and I have introduced this amendment to suspend the program until the solution made possible by the PATRIOT Act can realistically take effect. This is an issue that extends beyond apprehending illegal immigrants and actually works to secure our borders. This amendment would suspend the Visa Waiver Program.


Dear Mr. Gingrey,

I am writing to include for the RECORD a letter from the 9/11 Families for a Secure America in full support of this amendment.

9/11 FAMILIES FOR A SECURE AMERICA,

Staten Island, NY,

Hon. Phil Gingrey,

Chairman,

Cannon House Office Building
Washington, DC.

Dear Mr. Gingrey,

I am writing to support your amendment to H.R. 4457 to suspend the Visa Waiver Program until the automated and tamper-resistant machine-readable identification system authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is fully implemented.

The recent civil disturbances in France make it quite clear that the time is past when citizens of particular countries should be granted blanket permission to enter the United States without first applying for a visa. Many of the nations of Europe, after decades of permitting mass immigration from nations that sponsor terrorism have created a situation wherein millions of Islamic extremists, though closely connected to the terrorism that originates in countries such as Saudi Arabia, are themselves citizens of European nations. The result is that Islamic extremism is no longer limited to persons born...
in or citizens of Middle Eastern nations. For this reason, citizens of European countries should be subject to the same visa application process which applies to the other nations of the world.

If Islamic extremists commit another 9/11 it will not make any difference to the victims of that attack the people responsible that would rather than ones issued by Iran, Saudi Arabia or Lebanon.

Sincerely,

THE BOARD OF DIRECTORS,
9/11 FAMILIES FOR A SECURE AMERICA
Bruce DeCell, Sergeant, NYPD (retired),
Father-in-law of Mark Petrocelli, age 29,
Bill Boyce, father of Joseph, age 24, WTC North Tower.
Lynn Faulkner, husband of Wendy, WTC South Tower.
Peter and Jan Gadiel, parents of James, age 23, WTC, North Tower 103rd floor.
Grace Godshalk, mother of William R. Godshalk, age 35, WTC South Tower 89th floor.
Joan Molinaro, mother of firefighter Carl Molinaro.
Willi Peterson, Detective Sergeant (retired)
NYPD, father of Jason Sekner, age 31, WTC North Tower 105th floor.
Mr. KING of New York. Mr. Chairman, will the gentleman yield?
Mr. GINGREY. I yield to the gentleman from New York.
Mr. KING of New York. Mr. Chairman, these are issues that must be addressed, and I will assure the gentleman that, as chairman of the Homeland Security Committee, that I will work on these issues and address the very real concerns that you have. I would ask in that context you consider withdrawing the amendment with that pledge I make to you.
Mr. GINGREY. Mr. Chairman, I appreciate that spirit of cooperation. I know there are some concerns about the amendment. Indeed, a major airline in my district, in my State, has some concern over it, and people who are concerned about tourism and the economic effects of this amendment.
But I think this is a situation where, when we look back and think about 9/11, it would probably cost our economy $3 trillion if we have another attack of that magnitude. The cost of that, of reduced tourism, would pale in comparison to another $3 trillion cost to our economy if that should occur. I sincerely appreciate the chairman's willingness to cooperate with us, and I look forward to working with him on this issue.
Mr. Chairman, I ask unanimous consent to withdraw my amendment.
The Acting CHAIRMAN. Without objection, the amendment is withdrawn.
There was no objection.

PART B AMENDMENT NO. 7 OFFERED BY MR. CAMPBELL OF CALIFORNIA
Mr. CAMPBELL of California. Mr. Chairman, I yield an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 7 printed in House Report 109-347 offered by Mr. CAMPBELL of California:

At the end of title III, add the following:

SEC. 208. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE DEPARTMENT OF HOMELAND SECURITY.

(a) In General.—Section 1512 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

(1) by striking "Immigration and Naturalization Service" and inserting "Department of Homeland Security" each place it appears; and

(2) by adding at the end the following:

"(d) Enforcement.—

(1) INELIGIBILITY FOR FEDERAL LAW ENFORCEMENT AID.—Upon a determination that any person, or any Federal, State, or local government agency or entity, is in violation of subsection (a) or (b), the Attorney General shall not provide to that person, agency, or entity any grant amount pursuant to any law enforcement grant program carried out by any element of the Department of Justice, including the program under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1373), and shall ensure that no such grant amounts are provided, directly or indirectly, to such person, agency, or entity.

In this case of grant amounts that otherwise would be provided to such person, agency, or entity pursuant to a formula, such amounts shall be reallocated among eligible recipients.

(2) VIOLATIONS BY GOVERNMENT OFFICIALS.—In any case in which a Federal, State, or local government official is in violation of subsection (a) or (b), the government agency or entity that employs (or, at the time of the violation, employed) the official shall be subject to the sanction under paragraph (1).

(3) DURATION.—The sanction under paragraph (1) shall remain in effect until the Attorney General determines that the person, agency, or entity has ceased violating subsections (a) and (b)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to grant requests pending on or after the date of the enactment of this Act.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from California (Mr. CAMPBELL) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, there are cities around this country that have laws or executive orders under which they prohibit law enforcement officials from reporting to the Department of Homeland Security when they encounter, through the normal course of law enforcement practice, individuals who are aliens, who are foreign nationals and who are in this country illegally. That, first of all, is a violation of Federal law. Both the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 both prohibit cities from adopting that sort of ordinance.

But secondly, it is just wrong. We have Federal law and we have people in the ordinary course of their law enforcement activities encountering people who are foreign nationals and in this country illegally, and cities are passing ordinances making it a crime basically for those law enforcement officials to let Department of Homeland Security know that.

The reason this happens is there is no enforcement mechanism on this Federal law, right now. What this amendment would do is let an enforcement mechanism by making those law enforcement agencies in those areas not eligible for Federal grants if they have such a provision which is in violation of Federal law.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, let me say to the gentleman from California (Mr. CAMPBELL) that it is interesting that we come to the floor and try to make like there is a divide in the arresting and detaining of criminals. Every jurisdiction, outside of the Federal jurisdiction, has the right and responsibility to arrest criminals, whether they be documented or undocumented. There is no divide on that question. Local law enforcement, local sheriffs, local constables, local police, are the ones that must detain them and even send them through our judicial system.

Your amendment, however, breaks the back of our local jurisdiction, and it creates an enormous unfunded mandate. It would force cash-strapped State and local governments to enforce civil immigration laws. We want the criminals off the street. But you would force our local governments to take on extra responsibilities without funding.

Let me remind you that the idea of enforcement of terrorism really begins outside of our borders. That is what we are here to talk about, to ensure that we have strong border security enforcement.

I would also offer to say that we hope that the DeFazio-Lungren bill passes in a few moments because that is what it does, it ensures that we protect against those who would come inside. That would protect the Federal jurisdiction and the State. But this amendment preempts any State and local laws that bar their law enforcement officers from assuming the Federal responsibility of enforcing civil immigration laws.

But more importantly, what it does is it forces local jurisdictions to send police information about aliens, possibly a rape victim, who may be an undocumented immigrant. And this amendment opposes another unfunded mandate on State and local governments. It undermines effective community policing, increases racial profiling. As well, let me suggest that it requires local government to give information that it might not even have. Then you eliminate their opportunities to secure their own communities.

And so, frankly, this is but that most of the law enforcement are against, and it is enormously burdensome, and it breaks up the responsibility of
I represent a lot of local governments in Texas. My colleagues, I welcome the newest Member of the House from California; and I, likewise, welcome this commonsense amendment because in this amendment the gentleman from California encapsulates the challenge facing this House. We need to stop enforcing laws. Let us begin here. Thirty-two states in our Union are sanctuaries, Oregon and Maine are not. If border security is national security, if we have found that we have illegally in this Nation over 80,000 convicted felons from other cultures, why should it be difficult for local law enforcement agencies to themselves obey the law? “Yes” on this amendment. It puts some teeth in the bill.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. FARR).

Mr. FARR. Mr. Chairman, would the gentlewoman from Texas, but let me make it clear what this bill does and does not do, what this amendment does and does not do. It does not require local governments to do anything. All it does is tell them they should not prohibit, they should not actively prohibit their law enforcement officials from giving this information to the Department of Homeland Security. It does not require them to give the information. It says you may not prohibit or you lose Federal funds.

And my good friend suggests that the gentleman from California, Mr. ROYCE, Mr. ROYCE, Mr. Chairman, I rise in strong support of the Campbell amendment. This legislation is quite straightforward. It informs our States and localities to enforce the law. That sounds ridiculous to us, I am sure. But the fact is that one of the main problems with our immigration laws is that we are not enforcing them. And under the immigration reform legislation we passed in 1996, we prohibited States and localities from barring their entities and barring officials from providing immigration information to the Department of Homeland Security.

And now, these counties and these States have decided to defy the law. There should be a cost for that. And the cost, according to this amendment, which says we mean what we say, the cost is that they would receive no grant amounts made available to any Federal, State, or local government agency or entity that violates the law. The rule of law is important. Support this amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

You know, I wish that we could find a common ground on really securing America and not, if you will, unduly burdening our local and State jurisdictions that already comply with the law, that already arrest the criminals. Now you are asking them to engage in civil immigration issues, which should be under Federal jurisdiction.

And my good friend suggests that this is an allowance amendment; it simply allows them to do this. He knows that by the amendment or pronouncement coming from the Federal Government, what he does is he is impeaching local jurisdictions and they take on burdens that they truly cannot fund.

We should be focusing on securing the borders, providing an enhanced, pre-testing program for those who are coming into the United States, providing more resources for Border Patrol agents, allowing them to enforce the law in a better way, the law enforcement authority, being more secure in the visa program that we have. Those are some of the underlying elements that are missing out of this legislation, and I am sad to say that the present amendment will not in any way, I believe, provide any more security than what we have.

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

Mr. CAMPBELL of California. Mr. Chairman, I yield 45 seconds to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I urge all Members to support Mr. CAMPBELL’s amendment to help rid our communities of dangerous illegal alien criminals. I commend Mr. CAMPBELL for his commitment to immigration reform. His amendment would make sure that cities do not get Federal taxpayer dollars if they have policies in place that harbor and give sanctuary to illegal alien criminals. Sanctuary policies tie the hands of local law enforcement officers and keep illegal aliens who commit crimes in our country rather than deporting criminals according to our laws. Under these so-called sanctuary policies, in certain cities the police officers are prohibited from reporting the illegal aliens who commit crimes to Federal immigration authorities for deportation. As a result, taxpayers pay to incarcerate illegal alien prisoners who are later released back onto the streets.

Welcome to Congress. You have had an impact right away. Mr. CAMPBELL.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I continue to reserve the balance of my time.

Mr. CAMPBELL of California. Mr. Chairman, I yield the balance of my time to the gentleman from Georgia (Mr. NORWOOD).

Mr. NORWOOD. Welcome to Congress. You have had an impact right away, Mr. CAMPBELL.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

This bill will not work because local officials are not trained. They do not understand the difference between those who are undocumented or citizens. We are putting an unfunded mandate on it. We are keeping crime victims from reporting the crimes to local law enforcement. We are breaking community policing; and we are putting this heavy burden, and we are not securing America.

Provide resources to the Border Patrol and you will secure America. Provide technology and you will secure America. Vote “no” on the amendment.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from California (Mr. CAMPBELL).

The amendment was agreed to.
The Acting CHAIRMAN. It is now in order to consider amendment No. 8 printed in part B of House Report 109-347.

Mrs. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. The request of the gentlewoman is not timely.

PART B AMENDMENT NO. 8 OFFERED BY MS. JACKSON-LEE OF TEXAS

MS. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

PART B AMENDMENT NO. 8 PRINTED IN HOUSE REPORT 109-347 OFFERED BY MS. JACKSON-LEE OF TEXAS

Section 402 to read as follows:

SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

(1) all available detention facilities operated or contracted by the Department of Homeland Security; and

(2) all possible options to cost effectively increase available detention capabilities, including the use of temporary detention facilities, the use of State and local correctional facilities and private space, and secure alternatives to detention (in accordance with subsection (b)).

(b) SECURE ALTERNATIVES TO DETENTION PROGRAM.—

(1) NATURE OF THE PROGRAM.—For purposes of this section, the secure alternatives to detention referred to in subsection (a) is a program under which eligible aliens are released to the custody of suitable individual or organizational sponsors who will supervise them, use appropriate safeguards to prevent them from absconding, and ensure that they make required appearances.

(2) PROGRAM DEVELOPMENT.—The program shall be developed in accordance with the following guidelines:

(A) The Secretary shall design the program in consultation with nongovernmental organizations and academic experts in both the immigration and the criminal justice fields. Consideration should be given to methods that have proven successful in appearance assistance programs, such as the appearance assistance program developed by the Vera Institute and the Department of Homeland Security’s Intensive Supervision Appearance Program.

(B) The program shall utilize a continuum of alternatives based on the alien’s need for supervision, including placement of the alien with a non-profit or organizational sponsor, a supervised group home, or in a supervised, non- penal community setting that has guards stationed along its perimeter.

(C) The program shall enter into contracts with nongovernmental organizations and individuals to implement the secure alternatives to detention program.

(c) ELIGIBILITY REQUIREMENTS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select aliens to participate in the program from designated groups specified in paragraphs (2) through (4). The Secretary determines that such aliens are not flight risks or dangers to the community.

(2) VOLUNTARY PARTICIPATION.—An alien’s participation in the program is voluntary and shall not confer any rights or benefits to the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) DETERMINATION.—

(A) IN GENERAL.—Only aliens who are in expedited removal proceedings under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) may participate in the program.

(B) RULES OF CONSTRUCTION.—

(1) ALIENS APPLYING FOR ASYLUM.—Aliens who have established a credible fear of persecution and have been referred to the Executive Office for Immigration Review for an asylum hearing are deemed to be in expedited removal proceedings and the custody status of such aliens after service of a Notice to Appear shall be determined in accordance with 8 U.S.C. 1229a.

(2) UNACCOMPANIED ALIEN CHILDREN.—Unaccompanied alien children denied admission under section 203(g)(2) of the Homeland Security Act (6 U.S.C. 276(g)(2)) shall be considered to be in the care and exclusive custody of the Department of Health and Human Services and shall not be subject to expedited removal and shall not be permitted to participate in the program.

(d) DESIGNATED GROUPS.—

(1) ALIENS APPLYING FOR ASYLUM.—The designated groups referred to in paragraph (1) are the following:

(A) Alien parents who are being detained with one or more of their children, and their detained children.

(B) Aliens who have serious medical or mental health needs.

(C) Aliens who are mentally retarded or autistic.

(D) Pregnant alien women.

(E) Elderly aliens who are over the age of 65.

(F) Aliens placed in expedited removal proceedings after being rescued from trafficking or criminal operations by Government authorities.

(2) OTHER DESIGNATED GROUPS.—The designated groups referred to in paragraph (1) are the following:

(A) Alien parents who are being detained with one or more of their children, and their detained children.

(B) Aliens who have serious medical or mental health needs.

(C) Aliens who are mentally retarded or autistic.

(D) Pregnant alien women.

(E) Elderly aliens who are over the age of 65.

(F) Aliens placed in expedited removal proceedings after being rescued from trafficking or criminal operations by Government authorities.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

My amendment is very concise and very direct. The amendment deals with eligible aliens who are released to the custody of suitable individual or organizational sponsors who will supervise them, prevent them from absconding, and ensure required appearances.

Decisions on eligibility for participation are made on case-by-case determination by DHS with no judicial review. The various options for secure alternatives include placement with sponsor, group home or supervised environment with adequate security.

There is a need for secure alternative programs because my good friends over in the criminal justice field and numerous organizations and academic experts in both the immigration and the criminal justice fields, the use of State and local correctional facilities and private space, and secure alternatives to detention (in accordance with subsection (b)).
The gentlewoman’s amendment would make sure that children are treated appropriately while their matters are being reviewed. It does not say what the outcome has got to be, but just that we do not put children in prison with adults. Civilized nations do not do that. And I recommend the gentlewoman for her amendment. It would also increase the ability to hold those who are not currently able to be held since, for reasons we cannot understand, the Bush administration has 700 fewer bed-days than we did on September 11, 2001.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). Who claims time in opposition to the amendment?

Mr. MCCaul of Texas. Mr. Chairman, I claim the time in opposition.

The Acting CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. MCCaul of Texas. Mr. Chairman, I yield myself such time as I may consume.

Let me say at first, I have great respect for the gentlewoman from Texas, and I know this is a well-intentioned amendment. However, I believe there are numerous problems with this amendment.

It is unnecessary and seeks to create a class of aliens who will be not be detained with the rest of the alien population. However, the mandatory detention provision of H.R. 4377 preserves the already existing parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act that waives mandatory detention and releases aliens for urgent humanitarian reasons or for significant public benefit. In other words, the Secretary already has the power to release juveniles and aliens who have serious medical conditions in which continued detention would not be appropriate and women who have been medically certified as pregnant, the very classes that the gentlewoman seeks too release.

Also, this amendment creates a whole new bureaucracy that is not necessary. It takes away power from the department and those who are really experienced with these issues and concern in detention and has discretion to release juveniles and aliens who have serious medical conditions in which continued detention would not be appropriate and women who have been medically certified as pregnant, the very classes that the gentlewoman seeks too release.

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Mr. Chairman, I yield myself such time as I may consume.

Mr. MCCaul of Texas. Mr. Chairman, I yield myself such time as I may consume.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield the balance of my time.

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I yield myself such time as I may consume.

Ms. JOSE LOFGREN of California. Mr. Chairman, will the gentleman yield?

Mr. MCCaul of Texas. I yield to the gentlewoman from California.

Ms. LOFGREN of California. Mr. Chairman, I yield to the gentlewoman from California.

Ms. LOFGREN of California. Mr. Chairman, I know the gentleman is a decent person, and I respect that. But I do not know if he is aware of the government’s dismal record of arresting the 16-year-old in his Boy Scout uniform having attended the International Boy Scout Jamboree and then putting him in jail with adult prisoners. The record is not a pretty one, and I just wish those who have full power to lock up anyone he wants to if there are a criminal, but we have a very serious problem.

Mr. MCCaul of Texas. Mr. Chairman, regarding my time, I am sure we can point to extreme examples, but the fact of the matter is that the statute does already provide and gives the Secretary of the Department of Homeland Security discretion to release juveniles, aliens with medical conditions and aliens who are medically certified as pregnant. I also believe it already addressed by the law. And, therefore, this well-intentioned amendment, I believe, is unnecessary.
individuals recognize that this is a rea-
sonable approach. It is a risk-based ap-
proach that would allow the Secretary to 
consult to protect these detainees. 
I ask my colleagues to support this 
amendment.

The Acting CHAIRMAN. The ques-
tion is on the amendment offered by 
the gentlewoman from Texas (Ms. 
JACKSON-LEE).

The question was taken; and the Act-
ing CHAIRMAN announced that the noes 
appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. 
Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to 
clause 6 of rule XVIII, further pro-
cedings on the amendment offered by 
the gentlewoman from Texas will be 
postponed.

PART B AMENDMENT NO. 9 OFFERED BY MR. CASTLE

Mr. CASTLE. Mr. Chairman, I offer 
an amendment.

The Acting CHAIRMAN. The Clerk 
will designate the amendment. 

The text of the amendment is as fol-
lows:

Part B amendment No. 9 printed in House 
Report 109-347 offered by Mr. CASTLE of Dela-
ware.

At the end of title IV, insert the following 
new section:

SEC. 408. REPORT ON APPREHENSION AND DE-
PORTATION OF CERTAIN ALIENS.

(a) REPORT REQUIRED.—Not later than two 
years after the date of the enactment of this Act, the Secretary of Homeland Security 
shall submit to Congress a report on—

(1) the number of illegal aliens from non-
contiguous countries who are apprehended at 
or between ports of entry since the date of 
enactment of this Act;

(2) the number of such aliens who have 
been deported since the date of enactment 
of this Act; and

(3) the number of such aliens from coun-
tries the governments of which the Sec-
retary of State has determined, for purposes 
of section 1(a) of the Export Administra-
tion Act of 1979 (as in effect pursuant to 
the International Emergency Economic Pow-
ers Act; 50 U.S.C. 1701 et seq.), section 406(d) of 
the Arms Export Control Act (22 U.S.C. 
2780(d)(1)), section 620A of the Foreign Assist-
ance Act of 1961 (22 U.S.C. 2371), or other pro-
vision of law, are governments that have 
repeatedly provided support for acts of interna-
tional terrorism.

(b) SENSE OF CONGRESS.—It is the sense of 
Congress that the Secretary of Homeland Se-
curity should develop a strategy for entering 
into appropriate security screening watch 
lists the appropriate background informa-
tion of illegal aliens from countries de-
scribed in subsection (a) of this section.

The Acting CHAIRMAN. Pursuant to 
House Resolution 610, the gentleman from Delaware (Mr. CASTLE) and a 
Member opposed each will control 5 
minutes.

The Chair recognizes the gentleman 
from Delaware.

Mr. CASTLE. Mr. Chairman, I yield 
myself such time as I may consume. 
I rise to offer this straight-forward 
amendment to the legislation before us 
today.

Following the attacks of 2001, it is es-
ential that we improve our ability to 
track and identify terrorists attempt-
ing to cross our borders. Chairman 
SENSENBRENNER and Chairman KING 
drafted legislation to better de-
ect terrorist infiltrators, and I ap-
plaud them for their hard work on this 
important issue.

While most of the illegal immigrants 
who enter the United States do so for 
the purposes of finding work and mak-
ing a better life, there are also those 
that may take advantage of our porous 
boundaries to enter the country and take 
part in terrorist activities. In fact, re-
ports have projected that as many as 
4,000 immigrants from coun-
tries identified as high risk will be ar-
rested trying to enter the country ille-
gally this year. As we speak, terrorists 
are using alien smugglers and docu-
ments, other than obviously, Mexico 
people through Iran and Pakistan, and it is 
only a matter of time until terrorist 
organizations attempt to use these 
techniques to enter the United States. 

In 2004, the Border Patrol estimated 
that over 55,000 illegal immigrants 
from countries other than Mexico 
crossed our borders during a 10-month 
period. Of the illegal aliens from coun-
tries identified by the Secretary of State as sponsors who have been ordered deported, only about 6 percent have actually been removed, and these are only the ones we know about.

This legislation takes steps to en-
hance our border security procedures 
and improve our ability to identify and 
remove potential terrorists. As part of 
this effort, it is imperative that we 
closely monitor trends in the number of 
immigrants from noncontiguous na-
tions, other than obviously, Mexico 
and Canada, who enter our country il-
legally. After 2 years of this bill’s en-
actment, my amendment would provide 
esential oversight on the effectiveness 
of this system by requiring the Depart-
ment of Homeland Security to report 
to Congress on the number of illegal 
aliens from noncontiguous countries 
who are apprehended at or between 
ports of entry and the numbers of such 
aliens from countries identified by the 
State Department as sponsors of ter-
rorism.

My amendment would also encourage 
Homeland Security to develop a strat-
 egy for entering the appropriate back-
ground information of illegal aliens 
from countries sponsoring terrorism 
into appropriate security screening 
watch lists. 

With millions of illegal immigrants 
flooding over our vastly unsecured bor-
ders, there remains a huge vulner-
ability to terrorist attack. There is no 
doubt that al Qaeda and other terrorist 
groups will take advantage of any area 
that we fail to secure. Illegal aliens 
from countries known to sponsor inter-
national terrorism, in particular, 
should raise red flags, and Congress 
and the Department of Homeland Secu-
ry need to closely monitor these 
trends.

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

The Acting CHAIRMAN. Who claims 
time in opposition to the amendment?

Ms. ZOE LOFGREN of California. Mr. 
Chairman, I claim the time in opposi-
tion, although I do not oppose the 
amendment.

The Acting CHAIRMAN. Without ob-
jection, the gentlewoman from Cali-
fornia will control the time in opposi-
tion.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. 
Chairman, I yield myself such time as 
I may consume.

Mr. Chairman, I agree that we should 
get this information, and, actually, I 
believe that, under current law, the de-
partment is required to give us this in-
formation. In fact, there is an Office of 
Immigration Statistics buried in the 
bureaucracy of this department that is 
supposed to provide information to us 
on a variety of subjects.

I would just note that this is an agen-
cy that not only cannot administer, it 
is an agency that cannot count. We 
have had, for example, and it is a dif-
ficult issue, certainly, than terrorism, 
but I think several years in the last 
half decade where they have failed to 
count the number of visas when there 
were limits on employment visas, and 
then they say a big oops; they have 
given too many. And sometimes they 
try even to sneak around and deduct 
the overassessment from the next 
year’s. They cannot count because they 
do not have any technology.

I think it would be quite a dandy idea 
to find out not only who has been ap-
prehended from countries other than 
those who are immediately adjacent to 
us but a whole variety of other infor-
mation, statistical information, about 
these individuals.

Again, I appreciate that the author is 
in good faith trying to make this hap-
pen. I will make him a side bet, maybe 
lunch, that we will never get this infor-
mation any more than we get the infor-
mation on the H-1B program that usu-
ally is due every year and usually we 
get it somewhere between 1, 2, and even 
3 years late and wrong. I would like to 
get the information, but none of this is 
really going to happen until the inept 
administration of this function is im-
proved. And 1, regrettably, do not see 
that with the new Brownie coming on.

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

Mr. CASTLE. Mr. Chairman, I yield 
myself such time as I may consume.

I agree, again, with the gentlewoman 
from California. I am worried about her 
percentism in all this as to whether we 
can get these kinds of reports or not.

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But I think it is important to do this. 
I think it is very important that we 
ask this Department to come forward 
with this information. This basically is, 
again, a study after 2 years. They 
have got to give us the report. But, by 
God, we have got to hold them to it, 
too. I just think we have to know how 
these systems are working.

I do not think there is any question 
that the systems we have been talking
about tonight on a couple of occasions could work, but they do not work because the Department has not been able to implement very well what they are prescribed to do by law already. We are not asking them to do anything different, but they have not done some reporting. In that case, we can start to make decisions about what is working or not.

So I understand exactly what she is saying and understand her frustration, as a matter of fact; and in spite of that frustration, she is supportive and I appreciate that also.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. KING), the chairman of the committee.

Mr. KING of New York. Mr. Chairman, I yield the gentleman for yielding time.

Mr. Chairman, I once again am proud to urge adoption of his amendment. It is very a constructive addition to the bill. It certainly deserves the support of all Members, and I urge its adoption. Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wonder if I could ask the chairman of the committee a question: I understand from the Democrats on the Rules Committee that we have not yet received the manager’s amendment that has been discussed so frequently on the floor today to the underlying bill. We have not seen anything. Do you have any idea when Members will see this manager’s amendment that has been discussed today?

Mr. KING of New York. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield to the gentleman from New York.

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I yield such time as he may consume to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Chairman, reclaiming my time, I do recognize the problems you have raised, and I do think those are things that we have to consider.

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

The Acting CHAIRMAN (Mr. GINGREY). The question is on the amendment offered by the gentleman from Delaware (Mr. CASTLE).

The amendment was agreed to.

PART B AMENDMENT NO. 10 OFFERED BY MS. GINNY BROWN-WAITE OF FLORIDA

Mr. GINNY BROWN-WAITE of Florida. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

SEC. 615. DECLARATION OF CONGRESS.

Congress condemns rapes by smugglers along the international land border of the United States and urges in the strongest possible terms the Government of Mexico to work in coordination with United States Customs and Border Protection of the Department of Homeland Security to take immediate action to prevent such rapes from occurring.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentlewoman from Florida (Ms. GINNY BROWN-WAITE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Florida.

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. CASTLE. Mr. Chairman, the reports of the lawlessness along our borders are unprecedented. Stories about the number of young girls and women who smugglers and society’s dregs rape as they attempt to cross the border are widespread.

Numerous recent articles have told stories of Minuteman members who are haunted by cries of women who are being raped and abused, who when they
thought they were coyotes wailing in the desert. These are women and young girls being raped. All along the southern border, the sight of women’s undergarments hang from border fences as trophies. This is appalling, and yet it is also tragic. There are stories of mattresses tucked in caves for more convenient access to rape young girls as young as 8- and 9-year-olds crossing the border. Violent acts against females in this manner are despicable. Congress cannot and should not tolerate this behavior.

H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, takes decisive action to reduce and eliminate this criminal activity. My amendment to the bill is a declaration that Congress condemns these rapes along the United States border.

Additionally, my amendment urges the Government of Mexico and U.S. Customs and Border Protection to work together to take immediate action to prevent such rapes from continuing.

We all understand that the best mechanism for preventing these rapes is to encourage legal citizenship and to stop people from crossing our borders illegally and therefore putting themselves in harm’s way. By including my amendment in the underlying legislation, this House is sending a loud and clear message of its dedication to improving all aspects of border security. Urging both the United States and Mexico to take action is a good first step toward a peaceful, safe, and secure border.

The bill also provides a tremendous overhaul of the United States immigration policies, and I am very pleased that the House is debating this issue before we adjourn for the year. As a member of the Committee on Homeland Security, I look forward to implementing these measures, and I also look forward to the time when reports of rape and cruelty to young girls and women are not an issue on our border.

Mr. Chairman, I urge my colleagues to support my amendment, and I thank the gentleman for his recognition of this amendment’s merits.

Mr. Chairman, I yield such time as may be necessary to the gentlewoman from Florida (Ms. HARRIS).

Ms. HARRIS asked and was given permission to revise and extend her remarks.

Ms. HARRIS. Mr. Chairman, I rise today in strong support of this amendment offered by my colleague from Florida. Shockingly, thousands of women who cross the U.S. border illegally from Mexico are promised safe passage in return for sex and money. These women are not given safe passage, but rather become the trophies of criminal rapists as they hang the undergarments of their victims on the border fences.

But human trafficking and sexual exploitation impacts every corner of the globe; and the United States must lead an intensive, multilateral effort to stop it. Last year, an estimated 27 million people were forced into slavery around the world. I have heard the heart-wrenching stories of women and children, young girls, who are tricked, kidnapped, and enslaved.

These crimes occur in many forms, from sex trafficking to involuntary servitude. Women, even young girls, are told they will be taken out of the country where restaurants and hair salons are rumored to go. When these girls enter the country, their identification is taken away and there is no restaurant, no salon, only brothels. Furthermore, these girls are commonly told they must pay a debt for their transportation into the country, and they are forced to sell their bodies to pay off this debt. Our borders must not become the avenues for pimps, traffickers to make millions of dollars. These victims are left with insufficient access to social services, no education, or job opportunities. Sex trafficking rings are frequently linked to corruption, and law enforcement in some regions are even bribed to ignore these sex slavery rings, allowing them to continue.

Mr. Chairman, this amendment before us today takes the necessary first step not only condemning the exploitation of people across our borders but also strongly urges immediate action toward preventing such abuse from occurring in the future. I strongly urge my colleagues to vote in favor of this amendment and condemn this lawlessness on our borders.

The Acting CHAIRMAN (Mr. SIMPSON). Who claims the time in opposition to the amendment?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition although I do not oppose the amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman will control 5 minutes.

There was no objection. Ms. LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support this amendment. The amendment calls on the Mexican Government to work closely with U.S. Customs and Border Protection to take immediate action to prevent the occurrence of rape along the U.S.-Mexican border.

Rape is a horrible crime. Every 2½ minutes somewhere in the United States someone is sexually assaulted, and only 36 percent of the rapes are reported to law enforcement in the United States. It is safe to assume that the rate of reporting is considerably less along the border.

The women who are crossing our border are extremely vulnerable, and they are unlikely to tell law enforcement officials they were raped while trying to cross the border without their papers. The smugglers know that these women are vulnerable, and they take advantage of them. I think in many ways this amendment makes clear what many have been talking about today, and that is the need to gain control of the situation at the border.

I have talked today a lot about how dysfunctional the administration of our laws has been. We do not have enough Border Patrol agents; they are not properly equipped; we do not have enough prosecutors; we do not have enough judicial personnel; we are citing and releasing individuals and letting them go. We have a chaotic situation at the border, and we need to create an orderly situation at our borders. We need to take control of it. It is not occurring right now.

Part of that, and again this has been discussed, is to regularize the ability of individuals who want to come and be part of the American Dream so that they do not have to be with smugglers, vulnerable victims of crime, victims of rape; that there is some orderly manner for people to move back and forth across the border, to do the jobs that we know are not going to get done without them.

Earlier today, on the record, someone said, Well, you know, if this bill passes, that is the end of salads in America. I think we need to contemplate the role that immigrant labor plays in the area of agriculture, fast food, tourism, the hotel industry, the tourist industry and the like. I think it is a mistake that the underlying bill does not deal with that issue.

I do agree, however, that the gentlewoman’s amendment really calling on our two governments to coordinate, to fight this horrendous crime of rape is well intentioned, it is something I can support; and I hope it does some good.

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

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Florida (Ms. GINNY BROWN-WATTE). The amendment was agreed to.

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN (Mr. SIMPSON). The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 11 offered by Mr. HUNTER.

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN (Mr. SIMPSON). The Clerk will designate the amendment.

At the end of the bill, add the following:

TITLE IX—FENCING AND OTHER BORDER SECURITY IMPROVEMENTS

SEC. 901. FINDINGS.

The Congress finds the following:

(1) Hundreds of people die crossing our international border with Mexico every year. Illegal narcotic smuggling along the Southwest border of the United States is both dangerous and prolific.

(2) Over 155,000 non-Mexican individuals were apprehended trying to enter the United States along the Southwest border in fiscal year 2005.
The Chair recognizes the gentleman from California.

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, a few years ago, in fact in 1994, we mandated the construction of a fence of a fairly fashionable type of 3 miles from Calexico to Douglas, Arizona, a triple fence. And that fence, with a basic fence on the border, a Border Patrol road, then a secondary higher fence with an overhang, a second Border Patrol road and then a fence were designed to stop the massive drug trade and the smuggling of narcotics and people across what was the most prolific smugglers' corridor in America, that between Tijuana and San Diego.

At that time we had some 10 border murders a year. We had gangs that roamed that area that they called a "no man's land" to the point where Joseph Wambaugh wrote the best seller "Lines and Shadows about the no man's land that existed between Tijuana and San Diego. We had some 300 drug trucks a month crashing that border and running up with cocaine for our children.

We built that fence, Mr. Chairman, and in doing that we knocked down the border murders to zero. We knocked down the smuggling of both illegal aliens and narcotics to almost zero where that fence was. I might say that the present Border Patrol chief, Mr. Sylvester Reyes, stood in testimony, even adversely to his administration, and testified to the sufficiency of that fence.

This proposal, Mr. Chairman, is 700 additional miles of fence, and it has a great humanitarian aspect. The first piece of this fence, 361 miles from Calexico to Douglas, Arizona, is the area through which most of the people come who have represented those 400 deaths a year due to dehydration in the deserts of Arizona.

If we had 400 college kids or high school kids or neighborhood kids a year dying in a lake in a city, we would immediately fence it. By fencing that area we are going to prevent those deaths. We cannot fence it by the next season, which will start in the end of May this coming year, but we have in this legislation directed interlocking surveillance cameras so we can see people who are crossing the border while we are building the fence and we can respond. We can both deport them, and we can also save their lives, Mr. Chairman.

The second piece that is mandatory here is the 15 miles on each side of Nuevo Laredo. Across the river from Laredo is Nuevo Laredo where the drug lords reign, where they kill the local law enforcement officers within, some cases, a few hours of their taking office. If we don't dry up that massive lane smuggling of marijuana and the coming across that smugglers' jump-off point in Nuevo Laredo by fencing both sides with a double fence, 10 miles on each side of Nuevo Laredo, and we want to have it done and it is mandated by this bill by the end of the year this next year, we will have done great things for the people of America and the good citizens of Nuevo Laredo.

This has a great humanitarian aspect to it, and we costed it out. It is roughly $2.2 billion. That is a fraction of what we spend each year to incarcerate the criminal aliens whom we currently have in massive numbers in our Federal penitentiaries and in our local jails.

That is the essence of this. Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Who claims time in opposition to the amendment?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I claim time in opposition.

The Acting CHAIRMAN. The gentleman from California.

Mr. FARR. Mr. Chairman, I rise in opposition to this amendment and what it says about the United States of America.

I wish this debate had been held in committee and that something more than just the last-minute long list of amendments could be debated right here tonight, because I think most of the Members of this House have not read the amendment or understand the implications.

This amendment allows the Secretary of Homeland Security to not only build a wall between Mexico and the United States but to study building a wall across Canada, across our U.S. borders. In so doing, it gives the political appointee the authority to waive all laws, not only all environment laws but also notwithstanding any other provision of the law, child labor laws, laws to protect workers earning safe and healthy workplaces, Davis-Bacon laws, civil rights provisions, ethics laws for clean contracting and procurement policy, laws and statutes that give small businesses a fighting chance for winning contracts for construction.

There is no recourse to the abuse of power and certainly no good will come as demonstrated in this manner in safeguarding our national borders. If such is the case, it is up to the Members of Congress to be rational lawmakers and avoid overreacting in the hysteria of a few.

Mexico is California's number one trading partner. Our border with Mexico is the busiest in the world. More people and commerce legitimately cross that border than any other border in the world. Why would the Government of the United States at a time when we are advocating support for enforcement of law, why would the government now want to forbid the use of funds to finish the fence? Not only the importance of securing our border can justify placing a government official above the law.
How can we celebrate tearing down the Berlin Wall, fight undemocratic regions around the world, and build respect for law here at home with this kind of message?

Allowing a political appointee to waive the law and to prohibit legal appeals is not winning the war on terrorism; it is supporting it.

Ronald Reagan said, “General Secretary Gorbachev, if you seek peace, if you seek prosperity for the Soviet Union, if you seek liberalization, come here to this gate. Mr. Gorbachev, open this gate. Mr. Gorbachev, tear down this wall.”

Unfortunately, someone will have to say that about this wall some day because an America with walls between Canada and Mexico is not an America that reaches out for the people of this world to come here legally.

Mr. HUNTER. Mr. Chairman, I just wanted to mention that Ronald Reagan closed down the border when our agent Kiki Camarena was murdered and the killer was not produced forthrightly by Mexican authorities.

Mr. Chairman, I yield 2 minutes to the gentleman who is a co-author of this legislation and a tireless worker for this legislation and a tireless worker in the Homeland Security Committee.

Mr. DREIER. Mr. Chairman, I agree with my friend from California (Mr. FARR). We look forward to when we can tear this down. We want to be able to tear this down with our co-author of the legislation at a time when we see an end to illegal drug trafficking. When we see an end to illegal crossings of our border. We see economies of scale because of trade. But until that time, because of the success that we have seen with the 14-mile border fence from the Pacific Ocean to the Otay Mesa, it is absolutely essential that we build on that success.

We are in the midst of completing that 3½ mile gap, and Mr. HUNTER has just referred to the diminution that we have seen in cars running across the border and people running across the border at that fence.

This is a humanitarian issue as well. It is humanitarian because when we look at the 1,500 people, fellow human beings, who have died in the desert because of the fact that they have crossed illegally into our country, the existence of these fences at the most dangerous spots along our 2,000-mile border will go a long way toward saving the lives of our fellow human beings.

It is absolutely essential that we do all that we can to strengthen our relationship in trade, to strengthen our relationship in working with the Mexican Government but when we have a problem that is killing people, literally killing people, and costing the United States of America billions of dollars, the existence of this fence is the right thing to do. And I do anxiously look forward when we see things improved to see how we can completely tear down this wall.

Ms. JACKSON-LEE of Texas. Mr. Chairman, my good friend knows that the fence is no substitute for good intelligence.

Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oregon (Mr. DeFazio), a member of the Homeland Security Committee and the Transportation Committee.

Mr. DeFazio. Mr. Chairman, they are proposing here to build an extensive triple-wall fence along the Mexican border, ostensibly building on the success of a very short section of fence, and they say it is using polling that we should study building a fence along the entire 2,000-plus-mile Canadian border. They are not talking much about that. Here is a picture of one of the world’s existing fences that completely surrounds an area. It is in Melilla; and like Ceuta, which is attempting to keep Africans from getting into the Spanish states of Morocco, they do not work.

The EU paid for these double fences. They were not very effective. They killed people there, and people still go over it, around it, and through it. It is 10 feet high with concertina wire on top. They will make it 20 feet high with concertina wire on top. It does not work.

When Hong Kong was walled off by the Communist Chinese, again, a fairly extensive piece of land, and they could use deadly force, businesses were set up on the Communist Chinese side of the border, the entrepreneurs there, to guarantee to get people through in less than a minute. And they did. And it did not work.

They say it is only $2.2 billion. We could do a lot more with $2.2 billion. We could do some interior enforcement to keep illegal people from working here. We could hire more Border Patrol agents. There are a lot of things we could do with $2.2 billion, but to build or extend this fence, yeah, it will make someone rich like Bechtel or Halliburton or whoever is going to build this fence and will get a pile of money out of it; but it is not going to work. It does not work in Africa. It did not work in Communist China, again, where they are using deadly force. Are we going to use deadly force?

How about some enforcement on the Mexican side of the border? Well, they do not want to go there because they all voted for NAFTA. They do not want to say let us withdraw from NAFTA unless the Mexicans put enforcement there. Right now people line up on the border at night and the Mexican police say, hi, how you doing? Okay. And then they run across.

How about a little bit of international cooperation? There are a lot of things we could do here, but the things we could do that are effective offend big business who are the patrons of the Republican Party. That is interior enforcement, employer enforcement. People do not come here to go on vacation. They come here to go to work. If they could not get work, they would not sneak across the border. If we force the Mexican Government to do something on their side by threatening to withdraw from NAFTA, which we can do with 6 months’ notice, again, big business would not allow the Republicans to do that or George Bush certainly would not do it because he is for open borders. But they can pretend here that they are doing something.

They are wasting $2.2 billion of taxpayer money to do something that has not worked anywhere else in the world even where they are willing to shoot the people that go through the fence. Communist China, Morocco. It is not going to work here.

And what about Canada? Come on, guys, talk about the Canada part. Tell us about the 2,000-plus-mile fence along the Canadian border. That is going to be a real piece of work.

Mr. HUNTER. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. Royce) who has been a major proponent for this fence.

Mr. ROYCE. Mr. Chairman, I rise in support of this amendment. Of course, the circumstance is that in San Diego this fence has worked. In San Diego those crossing and apprehended where we have erected something have dropped from 202,000 a year in 1992 to less than 9,000 by 2004. So, yes, people still find a way around the fence, but not many. And if we are going to be serious, the establishment of a border fence project like this is probably going to work in some small proportion of these other communities that it has on San Diego, which is to say crime rates have fallen to a fraction of what they were. San Diego is no longer one of the most prolific drug smuggling corridors. So where is the fence needed? On these corridors you see here. This is where we can have the maximum impact.

Why is it important? Partly because this has become post-9/11 a national security concern. If we do nothing to stop people attempting to enter illegally off our southern borders, when we know that al Qaeda operatives have been in these communities, again, the establishment of a border fence project like this is probably going to work in some small proportion of these other communities that it has on San Diego, which is to say crime rates have fallen to a fraction of what they were.

Now, will we catch everyone? Maybe not, but 3,000 people from state sponsors of terrorism have been stopped to date, and this is a chance to make certain that al Qaeda operatives do not have an easier chance of getting into the United States.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me tell you what the 9/11 Commission announced to America as one of the key elements of the disaster and tragedy of 9/11. Even the majority of the commission who insisted on such a commission acknowledged that it was faulty and failed intelligence.
In this time of 21st century technology, my good friends and colleagues, who I have great respect for on the other side of the aisle, want to put into place the old Berlin Wall, again the same wall that Ronald Reagan had torn down, the same wall that will be as inept and ineffective and destructive as the Berlin Wall.

I think it is important to note for those who are talking about the area of Laredo, part of the State of Texas, and many of my colleagues from Texas have made this, is one section, but my friends should realize that the reason for the drug cartels in Nuevo Laredo is because we busted the Colombian drug cartels in Colombia, and they simply moved to Mexico.

So, rather than the old Berlin Wall, again, what we really need is an effective law enforcement at the border. We are going to put the Berlin Wall up, but we are not going to have 15,000 extra Border Patrol agents.

I would like to say that the Berlin Wall, without law enforcement, is misleading the American people into false security.

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

Mr. HUNTER. Mr. Chairman, I yield 30 seconds to the gentleman from Virginia (Mr. GOODE), my great cosponsor on this.

Mr. GOODE. Mr. Chairman, I want to thank Chairman HUNTER, Chairman DREIER and all of the supporters of this amendment.

Will this wall, will this fence make America absolutely safe, absolutely secure, and will it stop every illegal alien? No, it will not, but it will make us safer, and it will surely cut down the horrific numbers that flood into this country.

Vote to help save America. Vote yes on Hunter.

Ms. JACKSON-LEE of Texas. Mr. Chairman, how much time remains?

The Acting CHAIRMAN (Mr. SIMPSON). The gentlewoman from Texas (Ms. JACKSON-LEE) has 3½ minutes remaining. The gentleman from California (Mr. HUNTER) has 2½ minutes remaining. The gentleman from Texas has the right to close.

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is my pleasure to yield 1 minute to the distinguished gentleman from California (Mr. PARS). Mr. PARS. Mr. Chairman, I thank the gentlewoman for yielding me time. I just want to make a comment to my colleagues from California. Yes, the fence they showed was a fence that has been built without waiving any laws, a fence that is in existence. It did not need to do this Draconian kind of legislation here where you are going to an appointed official and giving them the authority to waive every law.

What really bothers me, and nobody has said it so far, is in your section 903, “The Secretary of Homeland Security shall conduct a study on the construction of a state-of-the-art barrier system along the northern international land and maritime border of the United States and shall include in the study,” a whole bunch of studies. That northern international border, as I know it, is called the Canadian border, and it is not about building a fence across the Mexican border. It is also about studying and building a fence across the Canadian border. It is a meat-axe approach, giving all these waivers, and it should be rejected.

Mr. HUNTER. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Chairman, I am happy to join my colleagues in cosponsoring this important amendment.

In many ways, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 is a return to basics for a complete overhaul of our system of immigration. An integral component of the basics is the long overdue need for securing the most populous areas of our southern border with physical barriers. Like locking the door to your house before turning on the alarm, it only makes sense to begin enforcement of our border with physical barriers.

My colleagues, Chairman HUNTER, Chairman DREIER and Mr. ROYCE, have attested to the success of the border fences in California. I believe we can apply this success to other parts of our borders using additional fencing and 21st century technology.

We need to stop the fluidness of our border before we consider any other immigration idea. In the words of a doctor, we need to stop the bleeding before we can stitch the wound, and constructing barriers on our borders is a critical first step toward curing this patient who has long suffered from inadequate therapy.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Let me just briefly bring to the attention of my colleagues again the point that we are trying to make.

We started out by saying that border security has no divide among Democrats and Republicans. It has no divide among Americans, but there is a right way to do and to enhance border security.

In this legislation, are going to offer the old Berlin Wall, again separating the north from the south, separating us from our Canadian neighbors.

It is interesting, however, that when we ask for 15,000 more border patrol agents, increased recruitment and training of those agents, adding more equipment to those agents, we get a respondents.

We need to do sensible, comprehensive immigration reform, not one that simply feels good, because the American people need real security.

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

Mr. HUNTER. Mr. Chairman, I yield 1 minute to the gentleman from South Carolina (Mr. BARRETT).

Mr. BARRETT of South Carolina. Mr. Chairman, I thank the chair for the time.

I rise in support tonight of the Hunter amendment. Nine years ago, Congress decided to build a 14-mile fence along the San Diego-Mexico border to curb drug trafficking and illegal immigration. As a result, the number of people caught crossing the border illegally along this area dropped by nearly 200,000 in 12 years.

Mr. Chairman, Americans are upset. They understand that too much of our border is still vulnerable. The world’s a different place than it was 9 years ago, and illegal entry has grown well beyond that 14-mile stretch of land.

By mandating construction of a security fence along the five most dangerous areas of the southern border, this amendment seeks to take the next step in making our Nation safer.

Additionally, I would like to thank Chairman HUNTER for working with me to include language requiring the Secretary of Homeland Security to conduct a study on the use of physical barriers along the northern border.

I urge my colleagues to support the Hunter amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I reserve my time.

Mr. HUNTER. Mr. Chairman, I yield the remaining time to close to the gentleman from California (Mr. DANIEL E. LUNGREN), the former Attorney General of the State of California, who understands border control.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I have heard the references to the Berlin Wall. There is only one problem: The Berlin Wall was built to keep people in, not keep people out. I do not recall in searching my memory a single example of people trying to jump over the Berlin Wall to get into East Germany.

This is for a different purpose. It is a different thing, and your suggestion that this is a Berlin Wall is only off by about 180 degrees.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself the remaining time.

I thank the distinguished gentleman for his recharacterization of the Berlin Wall. It kept people out, and it kept people in, and that is what we are saying about the largest gated community in the western hemisphere. It will keep the good people of Canada, the good people of the southern border, the trade and commerce, the friendship that we have developed, and it will cause no extra security to the American people.

Might I suggest to you that the 911 Commission reinforced the fact that it is intelligence, good intelligence, that keeps Americans secure. It is good equipment, good resources, good Border Patrol agents that are trained, professionally developed, not the falsehood of a security fence that cannot provide any security.

Might I remind my friends that the Berlin Wall allowed people to jump out
and to jump in. The Berlin Wall was not a secure wall for the East Germans. People escaped from East Germany. People will escape from Mexico and the southern border.

This will only injure the relationships of the United States and the Mexico. I believe this amendment is doomed to fall, and it should fall because the falseness of a security fence will not allow any Americans to sleep good at night.

Let us reinforce the intelligence community of America. Let us reinforce our Border Patrol agents, and let us reinforce friendship. Together, we can fight against terrorists, and we can fight against those who would come into the United States, undocumented, with real immigration reform and a comprehensive immigration plan as offered by many of our colleagues, such as Gutierrez, Kolbe, McCain and Kennedy. Let us talk about comprehensive reform.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Hunter).

The question was taken; and the Acting CHAIRMAN announced that the ayes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. Hunter) will be postponed.

Mr. DEFAZIO. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 12 offered by Mr. DeFazio

Mr. DeFAZIO. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 12 printed in House Report 109-347 offered by Mr. DeFAZIO:

At the end of the bill, add the following (and conform the table of contents accordingly):

TITLE

—PRESCREENING OF AIR PASSENGERS

SEC. 3. IMMEDIATE INTERNATIONAL PASSENGER PRESCREENING PILOT PROGRAM.

(a) PILOT PROGRAM.—Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall initiate a pilot program to evaluate the use of automated systems for the immediate prescreening of passengers on flights in foreign air carriers, as defined by section 40102 of title 49, United States Code, that are bound for the United States.

(b) REQUIREMENTS.—At a minimum, with respect to a passenger on a flight described in subsection (a) operated by an air carrier or foreign air carrier, the automated systems evaluated under the pilot program shall—

(1) make use of machine-readable data elements on passports and other travel and entry documents in a manner consistent with international standards;

(2) make use of machine-readable data elements on passports and other travel and entry documents in a manner consistent with international standards;

(c) OPERATION.—The pilot program shall be conducted—

(1) in not fewer than 2 foreign airports; and

(2) in collaboration with not fewer than one air carrier operating a foreign airport participating in the pilot program.

(d) EVALUATION OF AUTOMATED SYSTEMS.—In conducting the pilot program, the Secretary shall evaluate not more than 3 automated systems. One or more of such systems shall be commercially available and currently in use by private sector passenger carriers.

(e) PRIVACY PROTECTION.—The Secretary shall ensure that the passenger data collected under the pilot program in a manner consistent with the standards established under section 552a of title 5, United States Code.

(f) DURATION.—The Secretary shall conduct the pilot program for not fewer than 90 days.

(g) PASSENGER DEFINED.—In this section, the term "passenger" includes members of the flight crew.

(h) REPORT.—Not later than 30 days after the date of completion of the pilot program, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the following:

(1) An assessment of the technical performance of each of the tested systems, including the system's accuracy, scalability, and effectiveness with respect to measurable factors, including, at a minimum, passenger throughput, the rates of flight diversions, and the rate of false negatives and positives.

(2) A description of the provisions of each tested system to protect the civil liberties and privacy rights of passengers, as well as a description of the adequacy of an immediate redress or appeal process for passengers denied authorization to travel.

(3) Cost projections for implementation of each tested system, including—

(A) projected costs to the Department of Homeland Security;

(B) projected costs of compliance to air carriers operating flights described in subsection (a).

(4) A determination as to which tested system is the best-performing and most efficient system to ensure immediate pre-screening of international passengers.

Such determination shall be made after consultation with individuals in the private sector having expertise in airline industry, travel, tourism, international security, and computer security issues.

(5) A plan to fully deploy the best-performing and most efficient system tested by not later than January 1, 2007.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Oregon (Mr. DeFazio) and a Member opposed each will control 5 minutes.

Mr. Chairman recognizes the gentleman from Oregon.

Mr. DEFAZIO. Mr. Chairman, I yield myself such time as I may consume.

Hopefully, this will be a relatively noncontroversial amendment, unlike the preceding.

We are doing something nonsensical today. We have, post-9/11, required that manifests be submitted to the United States of America to our law enforcement authorities to identify incoming flights for all passengers on board. That is good. That was only voluntary before 9/11.

Unfortunately, we do not require that this be done until the flight has left, and we have all seen that a number of times flights have been turned back. They have had to land in Canada or Maine. People have had to be off-loaded. It would be very successful to have a program when we could vet the manifest before the plane leaves.

So this amendment would set up a pilot program. The technology exists. It is being done in Australia and elsewhere very successfully to have a pilot program so that we could show that this will work so that we can both make America more secure and facilitate international air travel.

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

The Acting CHAIRMAN. Does the gentleman from California claim the time in opposition?

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I do claim it; although I do not oppose it.

The Acting CHAIRMAN. Without objection, the gentleman from California is recognized for 5 minutes.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, it gives me great pleasure to be involved in this bipartisan amendment with my friend from Oregon.

The amendment addresses a dangerous flaw in our current system.

Under current practices, Customs and Border Protection does not receive the names of passengers on board international flights before the flights arrive in the United States until after the flight is in the air, as the gentleman explained.

When CBP finally gets the passenger manifest, it sends it over to the Transportation Security Administration, TSA, so they can compare it against the terrorist databases. At that point, if they find a name match, there is no way to reconcile the situation.

This has resulted in numerous high-profile instances where a plane was forced to divert or has had to land in a foreign country because it was flagged as a potential destination. I believe, almost every case while over the Atlantic. This inconvenience passes on passengers and costs the airlines hundreds of thousands of dollars incident. There have been, as I understand, seven diversions this year alone.

What is worse, since CBP and TSA have been operating this program, there have been two occasions on which the individuals flagged turned out to be the dangerous individuals on the watch list.

Fortunately, there is a commercially available system in use for flights to Australia that provides the airlines with a cleared or not cleared decision for each passenger in real-time, not 4 hours before or not 2 hours after they have taken off, but in real-time, at the time of check-in.

The system has been offered free of charge to CBP on a pilot basis. They have declined the offer and have yet to operate it for fear it would be too sensitive. I urge the Department of Homeland Security to pursue development of a new system for over a year now. I believe we are wasting valuable time.
This amendment, at a minimum, will force CBP to conduct a test of the commercially available systems within 90 days of the date of enactment. If CBP can complete the development of its own proprietary system, we will also get a real apples-to-apples comparison of these various products.

Ultimately, Mr. Chairman, this amendment will speed implementation of this vital program to ensure that the airlines will know who can board the plane safely and who cannot long before they take off the ground.

I believe everyone agrees that is the best possible situation. We have, on a bipartisan basis, I think, been frustrated by the responses we have received as to why they cannot develop their own program and why they then resist conducting a pilot program utilizing something that has already been done elsewhere.

The only question it seems to me is scalability: Can they scale up to the volumes that have been in the United States because obviously Australia is a smaller country with a smaller number of people? But in this bipartisan era in which we live today, I do not believe that scalability is a problem. That is the reason for this pilot project.

I would like to thank the gentleman from Oregon for his efforts and his willingness to work with me on this language. I would urge all Members to support this amendment.

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

Mr. DEFAZIO. Mr. Chairman, the gentleman has spoken so eloquently that I don’t think I can improve upon that.

[The Acting CHAIRMAN. The pending vote is ordered.]
The House agreed to the Agreement by the Concurrent Resolution, H. Con. Res. 312, as amended.

The vote was taken by electronic device, and there were—yeas 405, nays 15, not voting 13, as follows:

[Table with representatives' names and their voting status]

ANNOUNCEMENT OF THE VOTING

The Acting CHAIRMAN (during the vote). Members are advised 2 minutes remain in this vote.

□ 2310

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. KING of New York. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. REBERG) having assumed the chair, Mr. SIMPSON, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 437) to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes, had come to no resolution thereon.

URGING RUSSIAN FEDERATION TO WITHDRAW LEGISLATION REQUIRING REESTABLISHMENT OF NONGOVERNMENTAL ORGANIZATIONS

The SPEAKER pro tempore (Mr. REBERG). Pursuant to clause 8 or rule XX, the unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 312, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 312, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 405, nays 15, not voting 13, as follows:

[Table with representatives' names and their voting status]
Mr. HASTINGS of Florida changed his vote from "yea" to "nay."

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the concurrent resolution was amended so as to read: "Concurrent resolution urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign non-governmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions."

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.J. RES. 73

Mr. UDALL of Colorado. Mr. Speaker, because it was added in error, I ask unanimous consent to have my name removed as a cosponsor of H.J. Res. 73. The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 1815, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

Mr. HUNTER. Mr. Speaker, I ask unanimous consent to take from the table.

There was no objection.

Mr. Speaker, I offer a motion to agree to the Senate amendment, and, if there is no objection, to the conference asked by the Senate to disagree with the House amendment to the bill H.R. 1815, a bill to authorize the appropriation of funds for the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strength for fiscal year 2006 and for defense activities of the Department of Energy, to prescribe military personnel strength for fiscal year 2006, and to direct the President to submit to Congress the annual report required by section 2001 of the fiscal year 2005 National Defense Authorization Act.

I ask unanimous consent to have the title of the bill printed in the Congressional Record.

No objection.

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

There was no objection.

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

There was no objection.
apart from the enemy is our fundamental commitment to human rights and the rule of law. While the administration has publicly stated that Americans do not torture and that the United States does not secretly move terrorism suspects to foreign countries that do not respect their human rights, it is critical to ensure that the appropriate Members of Congress are fully informed about these activities. Congress must not hear of these matters from a newspaper.

During Senate consideration of the defense bill, an amendment was adopted with bipartisan support, by a vote of 92-9, that would clearly establish congressional oversight expectations over clandestine facilities currently or formerly operated by the U.S. Government, regardless of location, where detainees in the global war on terrorism are or were being held.

The provision, which had the support of both the chairman and ranking minority member of the Senate Intelligence Committee, does not pass judgment on the merit or values of these facilities. It simply asks for a classified accounting of activities related to the facilities by the director of National Intelligence to the Congressional Intelligence Committees. The provision was offered as a compromise measure by Senator KERRY and Senator ROBERTS, chairman of the Senate Select Committee on Intelligence, Senator ROCKEFELLER, vice chairman of the Intelligence Committee, also supported the provision.

The Senate provision sets a higher standard for congressional oversight than what we have seen throughout the war on terror on numerous matters, including the abuses of detainees. We must set a higher standard in our own oversight when it comes to what we expect the administration to tell us.

Success in any war requires the informed consent of the American people, and in a matter as sensitive as this, that can only be derived from Congress reviewing appropriate information from the administration so we can understand the issues involved and provide such consent.

The Senate provision is reasonable and limited in scope. It is the least we can ask for from the administration as it simply reinforces existing legal responsibility under title 50 of the U.S. Code to inform Congress about intelligence matters.

Voting for this motion to instruct will send a clear message to the American people that the Congress intends to thoroughly review this matter and fulfill our important oversight responsibilities. It will also send a message to our allies that we are taking this matter seriously. It is a reasonable and modest motion, and I urge my colleagues to vote yes.

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

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

Mr. Speaker, let me just start off by saying that I think this is a somewhat dangerous thing that we are doing right now. We are responding to newspaper articles. We are talking about an article in the New York Times that is disrespectful of the jurisdiction of this committee, and we are implying in this response that, if we have a positive vote that somehow there has been an inadequacy, somehow people have not been briefed about ongoing operations somewhere. Somehow there is a breakdown in our process. And I think that is precisely the wrong message to be sending.

Mr. Speaker, I yield 7 minutes to the gentleman from Michigan (Mr. HOEKSTRA), who chairs the appropriate committee, the Intelligence Committee.

Mr. HOEKSTRA. Mr. Speaker, I would like to thank my colleague from the House Armed Services Committee for yielding me this time and for accuracy. October discussion tonight is an item that falls under the jurisdiction of the Intelligence Committee. And as much as my colleague and I wrestled together to work out the responsibilities and the shape of the new director of National Intelligence, we worked through that process.

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

Mr. HOEKSTRA. I yield to the gentleman from Illinois.

Mr. ABERCROMBIE. Mr. Speaker, I have a serious question. Is there a question as to whether there is proper jurisdiction? If there is, would not the Parliamentarian have ruled that we are out of order now and not carry forward?

Mr. HOEKSTRA. Mr. Speaker, I re-claiming my time, I am pointing out why it is, from my perspective, inappropriate under the Defense Authorization Bill to Intelligence Committee what we need to do.

As I was indicating, it was last year at roughly this time, when my colleagues and I on the Defense Committee and the Intelligence Committee were shaping the new director of National Intelligence, responding to the concerns of the 9/11 Commission. And as we acknowledged through that process, we had a tremendous amount to learn from our colleagues on the House Armed Services Committee about how they used intelligence. They had, I think, a shared view that they had much to learn from the Intelligence Committee about how others in the intelligence community and policymakers might use intelligence.

But one of the things that we really focused on was that we could learn from each other. That is the only way that we can measure the performance of the DNI against benchmarks that we have established that will talk about the progress that we are making. Oversight is alive and well within the intelligence community. It is a key priority. It is a key focus, and it is a key bipartisan focus to make sure that we do our job well.

The last thing that we need to be doing as we are at war with radical Islam, in the middle of the war, is to begin instructing the Director of National Intelligence on what they should or should not be doing or what they should be preparing for Congress based on press reports in the Washington Post, the Washington Times, the New York Times or any other outlet. That is a very interesting way to direct a Federal bureaucracy.

The work that needs to be done is being done on a bipartisan basis. The DNI and other elements of the intelligence community understand their responsibility to be accountable to Congress for what they are doing, how they are doing it, and to make sure that they are acting within the confines of the laws and the framework that we have established.

Oversight is working. It is demonstrated in the fact that we do every day in the committee. It is demonstrated in the intelligence authorization bill that went through this Congress earlier this year, and when we come back with a conference report in February, you will continue to see the progress that we have made on a number of these issues.

It is being done in a professional way. It is not being done in an ad hoc way of
Mr. HOYER. Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. REHBERG). The gentleman from Maryland (Mr. HOYER) has 1½ minutes remaining.

Mr. HOYER. Mr. Speaker, the chairman of the Senate Intelligence Committee was a cosponsor of this resolution. Obviously, it was his conclusion the Intelligence Committees did not have it.

Regrettably, very frankly, I tell my friend from New York, this Congress has shown little inclination for oversight. The measures that we have not taken are not because we have had oversight on that we have not, particularly in the House as opposed to the Senate, which has had some more but not much. In my judgment, the revelations of clandestine CIA interrogation centers are serious and disconcerting, and this Congress, on behalf of the American people, needs to get at the bottom of it. The contention is that we have. Perhaps so. But apparently, again, the chairman of the Intelligence Committee does not think that is the case.

These revelations, if true, and the administration has not denied them, threaten to undermine our standing as the world’s leading advocate for basic human rights and the rule of law. That concerns me. I presume it concerns every Member of this body. They threaten to undermine our alliance.

Following in the footsteps of the mistreatment of prisoners at Abu Ghraib, which I think seriously undermined our position, Guantanamo Bay and Bagram Air Base, this story is yet another example of the administration’s reading a newspaper and saying, wow, that is an interesting allegation or theory that is out there. Yeah, we ought to put it into a bill that does not have anything to do with the intelligence community and say, we ought to instruct the intelligence community to go do this. That is the bill that we are discussing. It asks the director of the National Intelligence Agency to provide members of the House and Senate Intelligence Committees with a detailed report of any clandestine prison or detention facility where detainees in the global war on terrorism are or were being held.

That is a report to the Defense Committee as well. That is the bill that we are discussing. It is, I think, very relevant. I would hope every Member would vote for this motion.

Quite simply, this motion would instruct conferees to agree to a Senate provision, passed 62–9, that requires the director of the National Intelligence Agency to provide members of the House and Senate Intelligence Committees with a detailed report of any clandestine prison or detention facility where detainees in the global war on terrorism are or were held.

That is why I thought that I ought to know that information. The Intelligence Committee ought to know that information. Indeed, in my opinion, perhaps all America ought to know that.

I say to my colleagues, whether you are troubled by recent revelations that the United States operates a clandestine prison or prisons on foreign soil or not, and I am one who is troubled by it, you should not quarrel with the proposition that the Members of this Congress have a constitutional obligation to conduct a full and open-minded investigation of the administration’s conduct of this war. That is what makes America different.

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

Mr. HOYER. Mr. Speaker, I would be happy to yield to the gentleman from New York, had I more time.

Mr. HUNTER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. MCHUGH) for the purposes of conducting a colloquy with the gentleman from Maryland.

Mr. MCHUGH. Mr. Speaker, I, thank the gentleman from Maryland and the chairman of the Armed Services Committee.

Mr. Speaker, as I think the only Member in the House tonight who is both a member of the Armed Services Committee and the Intelligence Committee, I have been very, very concerned. The gentleman said that he felt the information should be known to the Intelligence Committee, and I agree with the gentleman, and also to the House.

Would the gentleman help me understand, because based on the language of the instruction, I see no requirement that the information reported to the Intel Committee be reported to the full House, is that his understanding, that somehow that very clandestine, very important information, very secretive information, should be shared to the whole House? Because that is not contained in the instruction.

Mr. HOYER. Mr. Speaker, reclaiming my time, I think the gentleman is correct. I think the Armed Services Committee, the whole House as a public disclosure. My understanding, and I stand to be corrected, is that every Member of the House, however, has the opportunity to go to the Intelligence Committee and see that information for themselves. I think I am correct on that. The gentleman may know more about that than I do.

Mr. MCHUGH. Mr. Speaker, reclaiming my time, I would ask the gentleman, why are we doing this? The fact of the matter is, as I believe the chairman of the Intelligence Committee suggested, the oversight activities associated with these kinds of facilities is being conducted by the Intelligence Committee and is in fact available to those Members of the House who wish to come here. Why is this instruction necessary?

Mr. HOYER. Mr. Speaker, reclaiming my time, the reason for that is for the oversight that we are doing that is very, very confidential and certainly if the chairman of the full committee would like to stand forward to the microphone and take this, I would be shocked, I would be stunned, if the gentlewoman from California, the ranking member of the Intelligence Committee did not have that information. The point being, at the end of the day, and there is no one, no one I respect more and feel more affection toward, in all areas but particularly in the area of defense, than the ranking member of the Armed Services Committee, the gentleman from Missouri (Mr. SKELTON), but it just seems to me that these are activities that are already occurring. They are activities that, as a 13-year member of the Armed Services Committee, in spite of my loyalty to that committee, I feel are beyond the bounds of this committee and are not necessary, and I am confused as to why we are here as members of the Armed Services Committee trying to instruct the Intelligence Committee to do something that is already being done.

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

The SPEAKER pro tempore (Mr. REHBERG). The gentleman from Maryland (Mr. HOYER) has 1½ minutes remaining.

Mr. HOYER. Mr. Speaker, the chairman of the Senate Intelligence Committee was a cosponsor of this resolution. Obviously, it was his conclusion the Intelligence Committees did not have it.

Regrettably, very frankly, I tell my friend from New York, this Congress has shown little inclination for oversight. The measures that we have not taken are not because we have had oversight on that we have not, particularly in the House as opposed to the Senate, which has had some more but not much. In my judgment, the revelations of clandestine CIA interrogation centers are serious and disconcerting, and this Congress, on behalf of the American people, needs to get at the bottom of it. The contention is that we have. Perhaps so. But apparently, again, the chairman of the Intelligence Committee does not think that is the case.

These revelations, if true, and the administration has not denied them, threaten to undermine our standing as the world’s leading advocate for basic human rights and the rule of law. That concerns me. I presume it concerns every Member of this body. They threaten to undermine our alliance.

Following in the footsteps of the mistreatment of prisoners at Abu Ghraib, which I think seriously undermined our position, Guantanamo Bay and Bagram Air Base, this story is yet another example of the administration’s
attitude toward adherence to domestic and international law. That concerns me. That is what separation of powers is about.

When we abandon the moral standards upon which our country was founded in the conduct of the war on terror, which I have supported, we not only diminish our standing in the world, we foment resentment against the United States and embolden those with whom we are engaged in a daily struggle.

I have supported that struggle. I intend to continue to support that struggle. But I think our moral standing needs to be as strong, frankly, as our military standing. Both will stand this country and Nation in good stead, as they have through history.

I thank the gentleman for yielding me time, and urge support of the gentleman from Missouri.

Mr. HUNTER. Mr. Speaker, I yield 9 minutes to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. Mr. Speaker, I thank the gentleman from California, the chairman of the House Armed Services Committee, for yielding me time.

I want to just look at the facts that are presented as modified in the amendment. Now, Senator Roberts has been here, and I have deep respect for Senator Roberts from Kansas.

He is a great American. He has served in the marines, and I think he makes clear sense. But what we have in this amendment says we want reported on ‘any clandestine prison or detention facility currently or formerly operated by the United States Government, regardless of location, where detainees in the global war on terrorism are or were being held.’

Now, terrorism is something that we have tried to define, to be interpreted in current terms. But are we talking about terrorism in the Revolutionary War, the War of 1812, the Civil War, World War I, World War II, the Vietnam conflict or Operation Iraqi Freedom? It is not really clear in this piece of legislation.

I think if you visit Iraq and the facilities that we have to hold prisoners of war or enemy combatants or if you have visited Gitmo, Guantanamo Bay, and the facilities we have there, I have been to both locations, and from my observation and my perspective as a Member of Congress from Kansas and the oversight that I have tried to conduct, we have conducted our incarceration of these people at a level that exceeds the Geneva Convention requirements. We have treated these people over and above those requirements so I am not really sure what I am trying to get to.

Even in Gitmo, or Guantanamo Bay, if these enemy combatants have tried to take their own life through starvation, we have gone over and above any requirements that are included in the Geneva Convention to keep these people alive. We even put them in the type of container so that we can give them food and nourishment to keep them alive. We have gone over and above.

So what we are trying to do, I think, in the language that I have great respect to the gentleman from Missouri is something I think that goes beyond what we need to expose to public debate in order to keep this country safe.

We have tried to explain to the American public why it is necessary to go do everything that is necessary to keep the American public from exposure to terrorist attacks. Part of that requirement says that we must take detainee, enemy combatants who have chosen to inflict harm on the American public, to a situation where we can get information from them to keep from further attacks occurring in America.

Now, in order to do that we have to put them in facilities, treat them with respect, give them access to any religious practices or detention facility currently or formerly operated by the United States Government, regardless of location, where detainees in the global war on terrorism are or were being held.

Now, this has gotten a great deal of public attention and headlines in the national media. Part of the problems that we face as Members of Congress is that we do not react to headlines, but react to proper policy. Headlines can be based on partial facts. Headlines can be based on things that are not complete in their intention. So what we have to do is, as Members of Congress, is take out all of the problems that are taken through these headlines that are not related to the facts, move that aside, and base our decisions on the facts.

What we are trying to do is protect the American public, number one. Number two, make sure that we treat these people with respect who are enemy combatants. And, number three, remember the point that it is against the law in America, no matter where you are on the face of the globe, if you are an American citizen you cannot torture an enemy combatant or a prisoner of war. It is against the law. If you do it, it is against the law. If it is a secret prison, whether they exist or not, it is against the law. If it is Gitmo, if it is Iraq it is again the law to torture anybody.

So to inform the American public, the theme has gone out, carried on somehow the United States has gone out, the theme has gone out, carried on in American media, that somehow Americans are debating whether or not to stop torturing people.

In fact, torture is banned. It is under the U.S.18, United States Code, and I believe section 2348, which says under the word ‘torture’ that if you torture someone, whether you are an agent of an intelligence agency or a uniformed soldier or just an average American, if you torture somebody up to 20 years in prison; and if you kill them while you are torturing them, you can be executed by the United States of America.

So the idea that somehow torture is not banned by American law and it does not carry heavy criminal penalties has been lost on the American media. One well-known reporter asked me does it really use the term ‘torture’ in this United States Code. And I showed that person the code and said, yes, it does, right there; and it has been banned for a long time.

It has also been banned in our signature, the effect of our signature on the anti-torture treaty. I think the gentleman for that clarification.

Mr. TIAHRT. Mr. Speaker, the two points I want to make in conclusion are very clear. Number one, it is against the law to torture anybody. If you are held in detention as an enemy combatant or prisoner of war or even in our civil prison system, it is against the law to torture anyone.

Number two, after my personal review of Guantanamo Cuba and the prisons in Iraq, we have exceeded the requirement of the Geneva Convention. We have taken care of our prisoners better than the requirements in the Geneva Convention.

If you go to Guantanamo Bay today and you walk through the prison cells, you will see that we have indicated the direction of Mecca. We have given them the ability to have a Koran which is not touched by the hands of infidels. We give them all religious freedom, to them as human beings. They are properly fed. We will not even allow them to starve themselves to death because we believe that it is more important to keep these people alive than it is to take their life because they are enemy combatants. We have gone over and above the requirements. And I think as Americans we should be proud of what our troops have done in containing these enemy combatants, in containing prisoners of war.

Wherever it is on the globe, we do not commit torture because it is against the law. We exceed the requirements of the Geneva Convention. So I think that the idea of legislation from the Senate is not required. It is, I think, inefficient and it should not be voted into law. I think that what we have done is proper and within the law and with respect to all human beings on the face of the Earth.

Mr. SKELETON. Mr. Speaker, how much time does each side have remaining?
Mr. Speaker, I yield myself such time as I may consume.

Why are those speaking against this motion saying this? Are they not anxious to learn the truth? That is what this is, an informational inquiry.

We have been hearing discussions from our friends on the other side, particularly my friend from Kansas, about something else. He did not address this particular motion.

Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. Holt).

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

Mr. ABERCROMBIE. Mr. Speaker, I was not intended to speak tonight, but I felt I must in light of what has been said about the operations of the Intelligence Committee on which I sit.

It has been suggested that this motion is unnecessary because we are already conducting full oversight. Oversight means collecting the information and then acting on it. That is what oversight is. That is what is expected of Congress under the Constitution. We have a right to oversight.

On the committee, as a committee, the House Permanent Select Committee on Intelligence has not collected information about purported possible or former detention facilities currently or formerly operated by the United States Government, regardless of location, where the detainees in the global war on terrorism are or were being held.

Perhaps the chairman has had some briefings, but I believe there are very many things that the chairman of the committee gets to hear that the rest of the committee does not, but we have not. The ranking minority member has told me that she has not. This motion would be worthwhile to be undertaken.

Mr. MCHUGH. Mr. Speaker, I reserve the balance of our time.

Mr. S KELTON. Mr. Speaker, I yield 3 minutes to the to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. Mr. Speaker, I think it is really a little bit beneath what our committee represents on armed services to think that Mr. Skelton would be responding to headlines.

Mr. SKELTON brings this motion because of what was in the Senate bill that was supposed to be under consideration for us during conference, a conference which we have not had.

Geneva Convention in our known facilities? Perhaps that is true. I expect it is true and it should be true, but that is what we are talking about.

Mr. Rumsfeld routinely responds to these questions on behalf of the Department of Defense. This question is before us because it is in the bill that we have to take up by way of conference. And the question that needs to be answered raised today by the chairman while Senator WARNER was there and while Ms. HARMAN was there. I asked does this language or anything having to do with the accusations that have been made whether in the newspapers or anywhere else any of that find its way into this bill, into our conference discussions in a way that deals with the outsourcing of torture, with renditions, a word which is now coming into our nomenclature, where we send people out for others to do it. That is at stake here and is clearly and explicitly involved in the motion to instruct. That is what we are trying to deal with.

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

Mr. ABERCROMBIE. I yield to the gentleman from New York.

Mr. MCHUGH. Mr. Speaker, the gentleman has spoken very eloquently about the Defense authorization bill and instruction. Will the gentleman tell me how this motion to instruct has anything to do with the Defense authorization bill? If the gentleman will answer the question I just posed, because I am confused, which happens often.

Mr. ABERCROMBIE. Mr. Speaker, if the gentleman is confused, it is the first time in my entire relationship when such was the condition.

Mr. MCHUGH. The gentleman's very kind but very inaccurate, but in any event, the motion to instruct, as I understand it, has nothing to do with this Defense bill. It has everything to do with the Intelligence Committee.

Mr. ABERCROMBIE. Mr. Speaker, we have gone through this. Whether the gentleman likes that it is before us in this context is really beside the point. I would have preferred it in another context as well, but we have to deal with the reality that it came to us as a result of the Senate action and is on the floor. If it was inappropriate, if there was some parliamentary reason for it not to be here, I expect we would not be having the discussion.

So my answer to the gentleman is that I am trying to deal with it in the context in which it has been presented, and I would like to deal with the substance of the issue rather than the process.

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

I would say the context of the gentleman's comments. My question was predicated upon the gentleman's assertion that this motion to instruct was related to this Defense bill when, in fact, it is not. The gentleman may wish to interrogate him as to whether or not it is important or is not.

My single point was this has nothing, with a capital N, to do with the Defense authorization bill. It is a motion to instruct another committee to do something that this committee does not have jurisdiction over.

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

Mr. MCHUGH. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Speaker, I quite understand the gentleman's position, and what I was trying to do in good faith in response was say, I cannot argue the process, but I am willing to concede even on process, but it is the substance which is before us right now in the Defense bill that came to our attention in the House, and that is what I think we need and that is what I was trying to respond to was the substance. I will not argue with the gentleman about whether the process is correct or not.

Mr. MCHUGH. Mr. Speaker, reclaiming my time, my point was not to debate the process, not to disagree with the substance, but to talk about the accuracy of the gentleman's words which were inaccurate.

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

Mr. MCHUGH. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank my friend for yielding.

I understand the gentleman from Hawaii, and I checked to make sure I understood him correctly and the facts given to him on the gentleman's position.

In fact, it is not. The gentleman may wish to disagree with the House bill. There is no provision, as the Senate does, has done something that should not be done. It is something inappropriate and something totally based upon the rule of no rule. I agree with the gentleman.

However, the gentleman from Hawaii's context was the Senate bill, which has no application, no provision, to this. That was the relevancy in my comments. That is all I was questioning was his comment relevant to the House bill. There is no provision, as there should have not have been, because this is not relevant to the House bill.

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

Mr. S KELTON. Mr. Speaker, I yield 30 additional seconds to the gentleman from Missouri (Mr. ABERCROMBIE) for the time.
Mr. Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. SNYDER).

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. MCHUGH).

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

My good friend from New York failed to read the part of the Senate bill that makes this all correctly before us. In section 1947, subsection A, the President shall ensure that the U.S. government continues to comply with the authorization reporting notification requirements of Title V of the National Security Act of 1947. The National Security Act of 1947 deals with this subject matter before us.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mrs. TAUSCHER).

The gentlewoman from California (Mrs. TAUSCHER), the chairwoman of the full committee, is opposed, and yet mysteriously this provision is rumored to be appearing in the conference report.

It is not the way to be doing business on the Defense bill in a time of war, and I hope that this provision will not be in the conference report when we consider it tomorrow.

Mr. MCHUGH. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. HUNTER), the chairman of the full committee.

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

The gentleman from Arkansas has just dismissed the plan for Santa Rosa Island and the idea that I wanted to use that great resource for Marines and soldiers and paralyzed veterans and allow them a chance to have recreational opportunities, and I guess I have to plead guilty.

This came up when I was passing that island with a car full of Marines who had just returned from Iraq. They mentioned to me that that is one of the great resources on our coast. It is owned by a family which does charge a lot of money to people to hunt and fish. One of them said, you know, it would be great if they did not exterminate all the deer and elk on that island because the Park Service has a plan, and it is a written plan, and I have seen it, to exterminate with helicopters every single deer and elk on this beautiful island.

The Marines continued, it would be great because that is such a neat place, and it is the kind of place where people in wheelchairs can access that great sport of hunting and fishing. If we could have some kind of a permission to continue to hunt and fish there but not pay the $10,000 that is presently charged but have that when the U.S. government takes it over for paralyzed veterans and disabled veterans and not exterminate every single deer and elk on that island.

That was the intent of this gentleman in placing that provision in the bill, and I find it somewhat ironic that the people who profess to love the wild life and the flora and fauna and the environment seem to have no trouble with the National Park Service gunning down every single animal on that island in an extermination operation and not leaving any of that great resource for the people who defend this country.

I thank the gentleman for the time.

Mr. MCHUGH. Mr. Speaker, I reserve the balance of our time.

Mr. SKELTON. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Speaker, I am proud to rise in strong support of my friend and ranking member Ike SKElTON's motion to instruct conferees on the defense authorization bill of which I am a conferee.

Mr. SKELTON's motion would ensure that the conference report keep a vital Senate provision that is in the bill on the Senate side which would require that the Director of National Intelligence report to Congress on what may be a covert CIA prison system.

My reference, in fact, was to what Americans are required to read, to the part of the Senate bill that is in the bill on the conference report that would give the proper intelligence to fully prosecute the war on terror. I am deeply concerned, as are many Americans, that the administration and the CIA may be resorting to illegal and immoral tactics that are destroying our national credibility and threatening the safety of our own troops should they be captured by the enemy.

The war on terror is in large part a battle of ideas and accounts of prisoners. As California senators are opposed to the California bill, and we have had a conference that actually met, and if we actually met, we would have had the same kind of response that the Senate did, which was an overwhelming vote in favor of having these provisions included in the bill, but we did not have a conference. We still have not had a conference where we have all met.

What I find to be fascinating as a member of Congress from California, there has been great discussion this evening about the prerogatives of the House and jurisdiction, and we have now a national park in California that has never had a hearing, that the Member of Congress from that district is deeply opposed to having it transferred to the military. Look, we are all for saving the deer and the elk, and we are certainly all for our veterans, but how about regular order? How about doing the right way?

We would not have a provision, a shameful provision, in this bill that transfers Santa Rosa Island to the military for the purpose of private recreation that is inserted in the 11th hour.

Including this provision is an egregious abuse of power to please certain special interests and would certainly embarrass its proponents at a time when we should be using this bill only to support the young men and women who are fighting and dying in Afghanistan and Iraq.

The provision supported by Mr. SKELTON's motion would restore Congressional oversight by ensuring vital information on the extent of these facilities, their location, the number of detainees currently being held there and the type of interrogations being conducted at these locations.

Separate but related to this bill I am deeply troubled by a shameful provision regarding the transfer of the Santa Rosa Island to the military for the purpose of private recreation that was inserted at the eleventh hour.
This instruction should be rejected not on its substance but on its politics. Mr. Speaker, I yield back the balance of my time.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. First of all, Mr. Speaker, the allegation that somehow this is a political thing is troubling, given that this provision that is being discussed, Missouri is part of the Senate defense bill. It is why it is on the floor. Our side, regardless of what we think about the specific provision, has every right to have a motion to instruct that provision that is in one of the two bills.

With regard to the provision that is not in either bill, which is the one with regard to the Channel Islands National Park, the allegation that somehow I am against veterans or against veterans with disabilities, by that rationale every national park in the country, we should say, is open for hunting by all veterans with disabilities. The point is, this is a national park. Under the Reagan administration, $30 million was paid to make this part of the national park with a management plan that is being followed.

Now, perhaps Mr. HUNTER has the right idea with this plan, I do not know. We have had no hearings about it. I know that it does not fall under the jurisdiction of the House Armed Services Committee; but to make an all-out allocation of supposed rights to veterans, I do not hear anyone suggesting we take the entire National Park System and because we are at a time of war we should open all the national parks for hunting.

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

Mr. SNYDER. I yield to the gentleman from New York.

Mr. MCHugh. I thank the gentleman for yielding. I would just say to him that I never accused him of being against veterans. What I said was, I know that it does not fall under the jurisdiction of the House Armed Services Committee; but to make an allocation of supposed rights to veterans, I do not hear anyone suggesting we take the entire National Park System and because we are at a time of war we should open all the national parks for hunting.

Now, perhaps Mr. HUNTER has the right idea with this plan, I do not know. We have had no hearings about it. I know that it does not fall under the jurisdiction of the House Armed Services Committee; but to make an all-out allocation of supposed rights to veterans, I do not hear anyone suggesting we take the entire National Park System and because we are at a time of war we should open all the national parks for hunting.

Mr. SKELTON. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. ANDREWS).
that Congress has as a coequal branch of government or to nullify the right we have to give motions to instruct. We have an absolute right to do that.

Now, this all goes back to 9/11, where all the fear has been created; and we have been more concerned about leaks and more concerned about open discussion exposing secret prisons than they are in exposing those prisons. People want to deny congressional oversight and deny the power of co-equal branches. It is immoral, the facts are that there is a real body of evidence suggesting that secret prisons do exist; that there has been rendition; that people have been basically yanked off the streets, moved to countries that use torture, and violations of human rights. I mean, what is happening to our country?

Let us look at our Constitution. We have habeas corpus, people have a right to be told what crime they have committed, they have a right to an attorney and to a fair and speedy trial. Now, why do we have those things? Because in America we stand for something.

So just putting some of the shredding of our Constitution: The violation of international law. What has become of our Nation when we do not challenge that or at least have the opportunity to support Mr. Skeleton’s motion to instruct, which is our right to do, to go along with what has already been approved in the Senate, and to say, look, we think that there ought to be a role for the Director of National Intelligence to give a report to the Intelligence Committee setting forth the nature and cost and otherwise providing a full accounting on any clandestine prison or detention facility currently or formerly operated by the United States Government regardless of location.

Look, let us remember what we stand for as a Nation. We are losing sight of that here. We are becoming something that could be called in another era un-American. Let us stand for our American values here and support the Skeleton motion.

Mr. Speaker, I wish to insert for the RECORD the following articles relating to my comments:

[From the Free Republic, June 5, 2005]  
U.S. RUNNING "ARCHIPELAGO" OF SECRET PRISONS: AMNESTY INTERNATIONAL  
WASHINGTON.—The U.S. government is operating an "archipelago" of prisons around the world, many of them secret camps into which people are being flushed a Koran in a toilet to rattle Muslim prisoners.

Amnesty is not the only rights group to have called on investigators to look at allegations at the camp—Schulz pointed to released FBI documents that also raised concerns about Guantanamo interrogations. U.S. officials insist such concerns are unfounded, and that the "war on terror" detainees are treated as humanely as possible. U.S. soldiers have been tried and punished for abuse, and the new military tribunals established for prisoners at Guantanamo Bay, the CIA has not even acknowledged the existence of its black sites. To do so, say officials familiar with the program, could open the U.S. government to legal challenges, particularly in foreign courts, and imperil political condemnation at home and abroad.

But the revelations of widespread prisoner abuse in Afghanistan and Iraq by the U.S. military—which operates under published rules and transparent oversight of Congress—have increased concern among lawmakers, foreign governments and human rights groups about the opaque CIA system. Those concerns escalated last month, when Vice President Cheney and CIA Director Porter Goss asked Congress to squeeze CIA employees from legislation already endorsed by 90 senators that would bar cruel and degrading treatment of any prisoner in U.S. custody.

Although the CIA will not acknowledge details of its system, intelligence officials defend the agency's approach, arguing that the secrecy of the defense of terrorism and the requirement that the agency be empowered to hold and interrogate suspected terrorists for as long as necessary and without restrictions imposed by the U.S. legal system or even by the military tribunals established for prisoners held at Guantanamo Bay. Why? By not publishing the names of the Eastern European countries involved in the covert program, at the request
of senior U.S. officials. They argued that the disclosure might disrupt counterterrorism efforts in those countries and elsewhere and could make them targets of possible terrorism retaliation.

The secret detention system was conceived in the chaotic and anxious first months after the Sept. 11, 2001, attacks, when the working assumption was that a second strike was imminent.

Since then, the arrangement has been increasingly debated within the CIA, where considerable concern lingers about the legality, morality and practicality of holding even unrepentant terrorists in such isolation and secrecy, perhaps for the duration of their lives. Former CIA officers began arguing two years ago that the system was unsustainable and diverted the agency from its unique espionage mission.

“We never sat down, as far as I know, and came up with a grand strategy,” said one former senior intelligence officer who is familiar with the program but not the location of the prisons. “Everything was very reactive. That’s how you get to a situation where you pick people up, send them into a netherworld. Don’t ask us what we are doing with them afterwards.”

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. MCDERMOTT).

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

Mr. MCDERMOTT. Mr. Speaker, this Congress ought to support Mr. Skelton’s motion because the reason we are here is that the United States Congress has refused to use its power of oversight to look at what we have been doing overseas. Have we had hearings about Abu Ghraib? Have we had hearings about secret prisons in Romania, in Poland, or wherever?

The Republican leadership of the House simply is not doing its job. We are going to look. We simply will hold our hands over our eyes and we will not look out there to see what is going on. Unfortunately, there is the rest of the world. There is the Guardian newspaper, there are newspapers in France and Germany and all over the place looking at this information, and it is now worldwide known what we are doing. Yet the Congress walks around here, see, no evil, hear no evil, speak no evil.

This Congress has abrogated, you have given up your responsibility of oversight. Mr. Skelton brings out a simple amendment that says, let’s follow the Senate, which has gotten up on the front page of a newspaper. We want to learn things as they should be properly reported to us from the White House which this motion to instruct would require. It is that simple.

The other side seems to wish to confuse the issue which causes me to shake my head as to why they oppose this motion to instruct. It is clear-cut. A huge majority of the Senators, both parties, voted in favor thereof in the Senate.

Mr. Speaker, I urge adoption of my motion to instruct, and I yield back the balance of my time.

Mr. SPRATT. Mr. Speaker, I rise today in support of the Skelton motion to instruct. Two years ago, the image of the United States was tarnished by photographs of prisoner abuse at Abu Ghraib. The photographs drew condemnation from members of Congress, the American people, and the world. At a time when we were professing American values, these photographs told a story of secrecy and disgusting abuse.

That’s why the Washington Post’s revelations about the CIA’s clandestine detention facilities last month are so troubling. We all understand the difficult job our interrogators have in trying to pry useful intelligence from tough, hostile prisoners. We all believe that the vast majority of our interrogators perform their jobs with professionalism and within the rules, and the information they have obtained has served as the intelligence foundation of our War on Terror.

But at a time when the wounds of Abu Ghraib have still not fully healed, fresh allegations of secrecy and questions about interrogation have the potential to reopen old issues of abuse that we have struggled for months to put to rest.

The President has said that “we do not torture” prisoners, and I take him at his word, but I do have the right to ask for answers about clandestine facilities supplied, of course, in classified form.

The Skelton motion to instruct simply calls on the President to disclose to the Congress the cost, location, and operations of the detention facilities referenced by the Post, and the ultimate disposition of the detainees that are held there. This would in no way hinder the effectiveness of interrogations, but it would go a long way toward showing the world we are serious about preventing prisoner abuse. As Senator McCain so eloquently said, “We are Americans. We hold ourselves to humane standards of treatment of people, no matter how evil or terrible they may be . . . The enemy we fight has no respect for human life or human rights. They don’t deserve our sympathy. But this isn’t about who they are; this is about who we are. These are the values that distinguish us from our enemies.” I urge my colleagues to support the Skelton motion to instruct. All it seeks is information to which we are already entitled under Title 50 of the U.S. Code and information we need to fulfill our duties under Article I, Clause 8 of the Constitution.

The SPEAKER pro tempore (Mr. REHBERG). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

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

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate agreed to the following resolution:

S. Res. 334

In the Senate of the United States, December 15, 2005.

Whereas William Proxmire served in the Military Intelligence Corps of the United States Army from 1941 to 1946;

Whereas William Proxmire served the people of Wisconsin with distinction from 1957 to 1989 in the United States Senate;

Whereas William Proxmire served as Chairman of the Committee on Banking, Housing, and Urban Affairs in the ninety-third to the ninety-sixth and one hundredth Congresses;

Whereas William Proxmire held the longest unbroken record for roll call votes in the Senate;

Whereas William Proxmire tirelessly fought government waste, issuing monthly...
CERTIFYING EXPORT OF CERTAIN MATERIAL AND EQUIPMENT TO PEOPLE'S REPUBLIC OF CHINA

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109-74)

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

To the Congress of the United States:

In accordance with the provisions of section 1512 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261), I hereby certify that the export of 36 accelerometers to the People's Republic of China's Ministry of Railways, for use in a railroad track geometry measuring system, is not detrimental to the U.S. space launch industry, and that the material and equipment, including any indirect technical benefit that could be derived from such export, will not measurably improve the missile or space launch capabilities of the People's Republic of China.

H. W. BUSH,


SPECIAL ORDERS

The SPEAKER pro tempore.

The Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

ST. MARY'S COUNTY HURRICANE RELIEF FUND

The SPEAKER pro tempore.

Under a previous order of the House, the gentleman from Maryland (Mr. HOYER) is recognized for 5 minutes.

Mr. HOYER. Madam Speaker, I rise today to recognize the extraordinary efforts of Joe St. Clair, Tom Jarboe, and Donald Cropp, founders of the St. Mary's Hurricane Relief Fund. That is the county in which I live.

Following the devastation of Hurricane Katrina, these three men organized the St. Mary's Hurricane Relief Fund to help the victims of the storm in the small town of D'Iberville, Mississippi, located in the district of my friend, Congressman Gene Taylor.

This October, Joe, Tom, and Don drove two tractor trailers stocked with needed school supplies, book bags and other goods the entire way to D'Iberville. These items were collected with the assistance of countless St. Mary's County businesses and volunteers. Literally, tens of thousands of dollars of contributions.

The Hurricane Relief Fund's work to help D'Iberville did not stop when they returned to St. Mary's County. Since their initial trip, the St. Mary's Hurricane Relief Fund has organized an Adopt A Kid Campaign to ensure that the children of D'Iberville had the resources that they needed, facilitated stationing a medical team in D'Iberville, sent educational supplies to Sacred Heart Catholic School, sent 80 first-aid kits to D'Iberville Health Care Clinic and worked to fulfill the needs of the community as requested by D'Iberville officials.

This December, Joe, Tom and Don organized another massive donation drive, Operation Mississippi Christmas, this time to ensure that no child in D'Iberville went without a present.

Last Friday, I visited with the organizers and a group of volunteers at a warehouse as they loaded two additional tractor trailers bound for D'Iberville. That is four tractor trailers for these young people. I am proud I was able to participate in this noble effort by donating hundreds of duffle bags filled with gifts.

When the trucks left for the Gulf coast on Saturday morning, they were loaded, with the first presents, and included among their cargo were 200 book bags loaded with school supplies, 50 additional first-aid kits, cases of needed medical supplies for the D'Iberville clinic, quilts donated by the local Amish community, bicycles, hundreds of duffle bags, 35 complete computer systems with printers, cables, etc., all donated by Smart Co., defibrillator batteries and a charger donated by St. Mary's Hospital, a critical item for the medical clinic, and 1,160 Wal-Mart gift cards for the upper middle and high school students.

On Sunday afternoon, the trucks rolled into D'Iberville, completing the approximately 16 hours and 1,000 mile journey.

On Monday, D'Iberville Elementary School held a pizza party as the presents were handed out and the goods distributed to the grateful community. At the end of the day, I received a call from the group indicating they had accomplished their mission of handing something to every school child, every school child in D'Iberville.

St. Mary's Hurricane Relief Fund has organized an amazingly successful relief effort, and I applaud its hard work.

I am proud that my constituents, realizing that they are part of a community bigger than St. Mary's County, have sought to help our neighbors in Mississippi during their time of need. Their efforts surely for us all symbolize the true meaning of compassion, and I think it sets a great example of giving in this holiday season.

Joe St. Clair and Don tell the story of the children and their eyes gleaming as they received these gifts. Joe St. Clair, a crusty businessman about 55 years of age, telling me the story had tears flowing down his cheeks.

Mr. Speaker, there is a lot of acrimony on this floor too often, and too often we forget to remember our neighbors and our friends. This is an example of the best that is America.

The SPEAKER pro tempore.

Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.

TODAY'S IRAQI ELECTION

Mr. OSBORNE. Madam Speaker, I ask unanimous consent to claim the time of the gentleman from Indiana (Mr. BURTON).
The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. OSBORNE. Madam Speaker, the Iraqis voted today, and it is estimated that approximately 10 million of 15 eligible voters voted in record numbers. The Sunnis participated in large numbers for the first time. The vote completes the political process in Iraq.

Last January, they elected an assembly to draft a constitution. In August, the constitution was approved by a large margin, about 70 percent of the voters. Now a new government is elected, and this was all done today with relatively little violence as the Iraqis went to the polls.

There is some other news that I think is positive as well: School attendance in Iraq is up by as much as 80 percent, 774 schools have been built or renovated, 96,000 teachers have been trained; and 142 health care facilities have been built or are under construction. Nearly all young Iraqis have been vaccinated for the first time. Satellite dishes, newspapers, TV stations and small new businesses are developing and springing up, and 212,000 Iraqi troops have been trained and equipped.

Still, there are many who say that there is no progress in Iraq, and I would like to reflect on some comments from a young soldier from Nebraska, who did vote. Women voted in large numbers for the first time and not pull out prematurely because, if we do leave early, three things will happen.

Number one, thousands of Iraqis will die, and we have promised them we would not abandon them, and so we will break a promise.

Secondly, we will encourage more terrorism worldwide and in the U.S. as well. It would inform the terrorists that terrorism does work.

And lastly, 2,000-plus soldiers would have died in vain. I think this is an important point to consider. As I have talked to parents of soldiers who have died, this is something that they do not want to have happen. There was a letter distributed today by Congressman JEFF MILLER from Bud Clay, and it was written to President Bush upon the death of his son, Staff Sergeant Daniel Clay in Iraq. This is what Mr. Clay wrote to President Bush, and I quote, he said, “We and many others are praying for you to see this through. As Lincoln said, ‘that these might not have died in vain.

Included in the letter from Mr. Clay was a letter from his son, and this letter was written if he should happen to be killed in combat, and it was written to his family.

The SPEAKER pro tempore (Mrs. SCHMIDT). Under a previous order of the House, the gentleman from Mississippi (Mr. TAYLOR of Mississippi) is recognized for 5 minutes.

(Mr. TAYLOR of Mississippi addressed the House. His remarks will appear hereafter in the Extension of Remarks.)

SAVING FOR A RAINY DAY

Mr. SCHIFF. Madam Speaker, I ask unanimous consent to speak out of turn.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. SCHIFF) is recognized for 5 minutes.

Mr. SCHIFF. Madam Speaker, the poet Longfellow once wrote: “Thy fate is the common fate of all; into each life some rain must fall.” How true this is.

We know that calamities will come to our country, that terrorists are trying to attack us again and that Osama bin Laden wants to strike us with weapons of mass destruction. We know that in years to come hurricanes, earthquakes, tornadoes, and other natural disasters will devastate our shores, our towns, our homes, and most terrible, our very lives.

We must prepare, not only with a strong military and good infrastructure but also with a reserve of funds to meet the needs of the victims. Part of being prepared is doing what many families know as saving for a rainy day.

America has seen both prosperity and depressions, periods of unbridled growth and periods of stubborn stagnation. We have seen strong budget surpluses and huge budget deficits.

While any economy has periodic cycles of expansion and contraction, we know that fiscally irresponsible policies of an administration or a Congress can abbreviate an upturn or prolong a downturn.

Today, a lack of revenue, uncontrolled spending and faulty planning have put our national debt so high that putting our fiscal house in order seems out of reach. I am here to tell you that it is not out of reach. It will take time, but it is possible and it must be done.

The Blue Dog Coalition has put together a comprehensive 12-point plan needed to reform our budget process, and one of these critical reforms is the creation of a rainy-day fund to set aside money for good times to pay for disasters, which we know will eventually come.

Madam Speaker, as you know, unlike the Federal Government, States must balance their budgets each year. In tough times States must raise revenue or cut spending. And generally, they cannot put these decisions off for another year or another generation. But many States have been resourceful. Forty-five of them, including my own home State of California, have created their own rainy-day funds. These funds are still small, too small and the States are in poor fiscal health. But they have begun the process of planning for their own rainy days.

According to the Center on Budget and Policy Priorities, since 2001, States have used around $30 billion from their rainy-day funds and general fund balances to help offset more than $250 billion in deficits.

Even during these weak economic times, States must continue to maintain and grow the viability of their rainy-day funds. In California we understand only too well that an earthquake, wildfire, or other calamity can strike our State without notice; and these funds will be crucial to helping Californians deal with the crisis.

The Federal Government must also be prepared for the Nation’s next crisis; but, sadly, we are not. Even today, this Congress struggles with the unprecedented task of rebuilding the gulf coast after the worst natural disaster in our Nation’s history.

Because the Federal Government failed to make the proper investment into the levees protecting New Orleans, our top priority cities now lies in ruins. If we had had the foresight to establish a national rainy-day fund prior to Katrina, immediate fiscal decisions of this Congress could have been so much less painful, the cuts so much less devastating, and we would not have to go so far deeper into debt to come to the aid of our fellow citizens.

Imagine also that if Congress properly invested each year into the rainy-day fund, the interest from this fund could be used to make needed infrastructure improvements, the same type of improvements that could have saved the city of New Orleans from such devastating flooding.

Congress has so far provided more than $62 billion in emergency funds to respond to Hurricane Katrina, but we know that so much has not been used. So much more was spent after September 11 and still our Nation’s needs are not met.
Let us do what we encourage all of our children to do and save for the future. I encourage this Congress to take a strong look at the Blue Dogs’ 12-point plan and establish a rainy-day fund.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. BURGESS) is recognized for 5 minutes.

(Mr. BURGESS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

A REMARKABLE DAY IN IRAQ

Mr. HAYES. Madam Speaker, I ask unanimous consent to take the time of the gentleman from Texas (Mr. BURGESS).

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. BURGESS) is recognized for 5 minutes.

Mr. HAYES. Madam Speaker, this has been a remarkable day in Iraq, and I would like to direct our attention, for a moment to the things that Mr. OSBORNE outlined. Remarkable, the accomplishments of Iraqi people today. More than 70 percent of their population went to the polls and exercised the right that they have ever had before, the right to vote for a democratic government. That vote was courageous. It showed commitment. It showed the resolve of the Iraqi people to take control of their destiny and their future. It was a tremendous step forward for peace, stability in the future of freedom in the Middle East. So I would like to take a part of my time to salute and to call attention to the incredible things that the Iraqis have done today and have committed themselves to do in the future by voting for a free Iraq.

But more especially, Madam Speaker, I would like to call attention to the men and women in uniform from America and around the globe in the coalition forces, but especially tonight the American men and women who have made this election possible, who have spoken out, who have given, in many instances, their lives to make this election possible, who have served the symbols of Christmas. But they have done today and have committed themselves to do in the future by voting for a free Iraq.

My most sincere thanks and the thanks of a grateful Nation is extended from every quarter today to these men and women who have performed so courageously and so remarkably and have made this day and this election possible. I do not know how we can thank them enough, but it is a privilege for me to stand before the people’s House and call attention to these wonderful men and women who represent America and all that we stand for—freedom, democracy, equal opportunity.

They did it today. What a tribute to them, but especially a tribute to their families, the moms and dads, wives and husbands of those soldiers, sailors, airmen and marines whose lives have been lost in the quest for freedom for people around the world.

So as I close, Madam Speaker, thank you for giving me the privilege of speaking on behalf of myself, the Eighth Congressional District of North Carolina, the home of Fort Bragg, the 18th Airborne Corps, the 82nd Airborne Division, and all the men and women in uniform. God has blessed America so richly as we see the service men and women who have stood and fought and won for democracy.

God bless them all.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. DeFAZIO) is recognized for 5 minutes.

(Mr. DeFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

IRAQI ELECTIONS

Ms. WOOLSEY. Madam Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California? There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Madam Speaker, with the holidays upon us, some Members of this body have been working really hard to divert attention from much of the pressing issues that we should be working on in this Congress. They have been doing this by complaining about some kind of war on Christmas.

You can always tell when their poll numbers are down. That is when they reach into their bag of culture war tricks and gin up a divisive controversy that has nothing to do with Americans’ real challenges and Americans’ real aspirations. It is really interesting, my colleagues on the other side of the aisle are very interested in pre-suing, my colleagues on the other side of the aisle are very interested in preserving the symbols of Christmas. But the war they are supporting and the budget they are passing, more Scrooge than Santa, demonstrate that they haven’t a clue about the true meaning of Christmas, particularly the part about peace on Earth and goodwill towards all.

Besides, how many casualties have there been in this so-called war on Christmas? Here is a hint. Several thousand less than the war on Iraq. Today, without a doubt, we should congratulate the Iraqi people for what appears to be a successful, high turnout election. For the third time this year, courageous Iraqi citizens have enthusiastically exercised their democratic rights.

But successful elections do not, and cannot, obscure the devastating national tragedy that is the Iraq war. It does not change the fact that over 2,100 Americans have died for weapons of mass destruction that never existed. It does not change the fact that this war has turned Iraq into a hotbed of terrorism and violence. It does not change the fact that our troops are sitting ducks for the insurgents who have been emboldened, not deterred, by our military presence in Iraq.

Now that the elections are over, the question is, What now? What next in terms of U.S. policy towards Iraq? Aside from trying to spin it and take credit for it, what is the President’s reaction to this Iraqi election? All indications are that even with a modest reduction in troops, he will insist that we must stay the course. That means continuing with this bloody occupation that has killed or maimed thousands of our people, has cost us hundreds of billions of dollars and turned the entire world against us. Furthermore, he will not make the irony in celebrating Iraqi democracy while we use United States taxpayer money to manufacture propaganda and spread it in the Iraqi press. He will ignore the contradiction in praising Iraqi freedom while violating civil liberties at home by pushing for a more heavy-handed and invasive sequel to the PATRIOT Act.

Here is the bottom line: a successful Iraqi election should, at the very least, reinforce the imperative of bringing our troops home. If Iraq is truly able to self-govern, then we have no business occupying their country and meddling in their affairs.

I have argued all year long that it is time to restore Iraqi sovereignty and give Iraq back to the Iraqi people. If the election is a watershed moment, as the White House claims, then what is the continued justification for having our troops over there in harm’s way?

Now is the time to enlist the support of our international partners and to establish an interim security force for Iraq. But that is just the first step. As I have written to the President in a letter signed by 61 other Members of the House, the United States must also launch a diplomatic offensive recasting our role in Iraq as a reconstruction partner, rather than a military occupier.

We must also lead the way in establishing an international peace commission to oversee the reconciliation and coordinate peace talks between Iraq’s various factions.

Madam Speaker, sometimes it seems like the only people who still support this war work in the big white building down Pennsylvania Avenue. There is barely any constituency left for our Iraq policy. The majority of the American people are not behind it; our global allies are not behind it. The Iraqi people are not behind it. Even Iraqi leaders, Sunnis, Shiites and Kurds and Iraqi civilians, and the Iraqi army, who did support the war, have united around the call for the United States military to leave. With the Iraqi people having voted once again
Republicans claim government, the one they control, is incapable of addressing America’s needs. They proved it down in Louisiana. They proved it themselves. Their tortured logic says that we can wage war, but we cannot solve the health care crisis.

Pick up the korporatist and the conclusion is inescapable. There are no more tomorrows. The health care crisis is real and a present danger to the American people and the U.S. economy, much more than this war on terror.

Especially hard hit is the manufacturing sector. Employees throughout the country are bracing for plant closings or wage and benefit cuts. We came out here and did pensions again today. We continue to do it to the workers.

Companies like General Motors and Ford cite the cost of providing health care coverage as a major factor in their current financial crises. So quietly behind the scenes here on Capitol Hill, the domestic industry has been talking to lawmakers about a bailout. They are looking for tens of billions of dollars next year and say it is required to save the auto industry and thousands of family wage jobs.

I am a strong supporter of America’s labor movement and a strong supporter of family wage jobs. And if a company treats its employees right, I strongly support them as well. That might make me a candidate for supporting an auto bailout. But it makes me wonder why Republicans will not join Democrats and fight for its family from within, a health care system that is destroying people, business, and our way of life.

Republicans say, let the market fix it. Well, we have done that. And the special interests have said stay out of it because people like me want this Nation to guarantee health coverage for everybody. Lobbyists make a living in this town out of the fear of us against them and how we have to do it individually, and we cannot do it as a country.

Well, I will enter into the Record a letter that sets the record straight and give us a chance to finally confront America’s health care crisis. This letter was sent separately to the Canadian government by the Ford Motor Company, General Motors, Daimler Chrysler and the union representing auto workers.

The so-called big three U.S. car companies put their full support behind publicly, publicly, funded health care in Canada. Let me read some excerpts. “Canada’s publicly funded health care system provides essential and affordable health care services for all Canadians, regardless of their income. For both employers and workers in the auto industry, it is vitally important that the publicly funded health care system be preserved and renewed.”

The letter sent by GM, Ford, and Daimler Chrysler, concludes: “In addition to reinforcing the quality and accessibility of health care for all Canadians, these measures would also help to ensure the long-run success of the Canadian auto industry.” There is a business reason to do it. That is the U.S. auto industry acting outside the United States. It is time for them to act inside the United States and for us to act.

H.R. 1200 provides universal health care with guidelines for Federal Government decisions by local government and health care by the private sector.

My Democratic friends have other ideas. There is more likely how to do this. We ought to get them on the table. It is time for the Republican majority to make health care a priority. It is time for the auto industry to support a solution that is morally responsible and economically urgent: health care. Every American has a right.

Madam Speaker, we have been talking about it, and we have not done anything. It is time to stop talking about Christmas trees and start talking about health care for all Americans.

SEPTMBER 10, 2002.

Canada’s publicly funded health care system provides essential and affordable health care services for all Canadians. It is a vital part of Canada’s competitive advantage and the reason why so many companies like General Motors and Daimler Chrysler are beefing up their Canadian operations and expanding in Canada.

The public health care system significantly reduces total labour costs because most health care services are supplied through public programs (rather than through private insurance plans). The public health care system significantly reduces total labour costs for automobile manufacturing firms, compared to the cost of equivalent private insurance services purchased by U.S.-based automakers; these health insurance savings can amount to several dollars per hour of labour worked. These savings are important in attracting new auto investment to Canada.

Canada’s publicly funded health care system is now facing demographic, technological, and fiscal pressures. The erosion of publicly funded health care through measures such as the delisting of currently-covered services, the imposition of user fees, the failure of the public sector to keep up with the changing nature of health care, and new costs such as prescription drugs and home care, will impose significant costs on auto manufacturers and the attractiveness of Canada as a site for new automotive investment.
For both employers and workers in the auto industry, it is vitally important that the publicly funded health care system be preserved and renewed, on the existing principles, accessibility, affordability, comprehensiveness, and public administration. The system needs a secure multi-year funding base from government, and more importantly, to preserve the public health care system, secure its funding base, and modernize the range of services which it covers. In addition to reinforcing the quality and accessibility of health care for Canadians, these measures would also help to ensure the long-run success of Canada’s auto industry.

ALAIN BATTY,
President and Chief Executive Officer, Ford Motor Company of Canada, Limited.

BASIL ‘BUZZ’ HARGROVE,
National President, CAW-Canada.

A FREE IRAQ

Mr. KING of Iowa. Madam Speaker, I ask unanimous consent to take my Special Order at this time.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. KING) is recognized for 5 minutes.

Mr. KING of Iowa. Madam Speaker, I appreciate the opportunity to be recognized on the floor of this United States Congress and the opportunity to address the Members.

As I sit here and listen to this discussion that has gone on tonight, I would kind of like to unravel some of this from the top down and little bit. And, again, the lamentations come down about all the things that are going wrong in the world and particularly a list of things that are allegedly going wrong in Iraq.

My colleagues might notice that my finger is purple today. And it is purple in celebration and in solidarity with the freedom of the Iraqi people. The people have gone to the polls three times in this calendar year, and each time they said it could not be done, and each time they did an even better job. The election that elected the interim government that has now put together the constitution; the October 15 election that ratified the constitution; and then today’s election that completed today, December 15 by their calendar. And it has now elected a new general assembly that will select from them a prime minister. And he will be seated in March, and they will be the most sovereign, the most representative Arab country in the world. Imagine that, Madam Speaker, sitting at the UN table representing the most integrity because they represent the real people in their government.

The argument came from the gentlewoman that there were no weapons of mass destruction and that was allegedly the only reason that we went there. When did this country give up on liberation, Madam Speaker? Did we give up on this when we sent that to the USS Maine in 1898 after the USS Maine was sunk in Havana Harbor? We had the Spanish-American War that took place, and the USS Maine is still at the bottom of the harbor in Havana. But the Filipinos were liberated by the United States. And today, the Filipinos are grateful that the Americans came and liberated them, and we carried over there our way of life, our free enterprise system, our property rights concept, an educational system, an English language. And today, they are a prosperous people because they were liberated by Americans in 1898.

And look at the liberation that took place in the Civil War, Madam Speaker. There was no objection. About States’ rights. It was about saving the Union. Abraham Lincoln’s efforts were focused on saving the Union. And then, later on in the war, he signed the Emancipation Proclamation. No one thought too much about the time. Now we remember that as the war to free the slaves.

So sometimes we have to have a list of reasons why we have to go to war, Madam Speaker. And this is a war that has freed 25 million Iraqi people, 25 million who have established the lodestars for the Arab world to follow this democracy that is going to be now a prosperous Iraq, and that can bring freedom to the entire Arab world, which brings peace to most of the world as we know it and eliminates the habitat for terrorists throughout the world.

This is a very, very noble thing that this country has done. It is a very, very noble sacrifice on the part of the 2,100 who have paid the sacrifice, who have sacrificed their lives for the freedom of the Iraqi people, for the safety of the American people.

It is not a terrorist center there unless you want to say a grave center for terrorists. They are taking 3,000 terrorists off the street every month between killed and captured. That is far more than the casualties that we are taking. Saddam Hussein was killing his own people at the rate of 182 per day, and Saddam Hussein, who had killed over 100,000 Iraqis that are alive today that would not be if Saddam Hussein were still running his torture chambers, still running his plastic shredder machine, and with weapons of mass destruction, real gas weapons of mass destruction, killing his own people. This adds up to a humanitarian effort that is not unsurpassed in the world but unsurpassed by other countries aside from the United States of America.

The argument that we are using dollars to purchase propaganda in the Iraqi newspapers. Good night. How far do you go to make an argument against the American people? Maybe we ought to spend these tax dollars to try to get the real news printed in the New York Times or the Washington Post, Madam Speaker. If that is what it takes, that is what we ought to do because part of this war is to defend our troops and our military. And I am tired of listening to people, and I did not hear it happen tonight, of people that say, ‘I support our troops but I oppose the war.’ That means they oppose their mission, and they are asking soldiers to put their lives on the line for a mission that they do not believe in.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.

FOREIGN-HELD DEBT

Ms. KAPTUR. Madam Speaker, I ask unanimous consent to take my Special Order at this time.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Madam Speaker, there are some things that Congress and the President can really do something about. And one of those is the management of our Federal accounts.

The news today reports in USA Today, Oil imports help push the trade gap to record highs. Every time I see the fact that we are importing more oil than finding ways to become more energy independent, Madam Speaker, I say to myself, there is something that America really can do but is not doing.

The New York Times reported, and I include this in the RECORD, today that the U.S. trade deficit indeed has hit record highs, threatening U.S. growth. We are going deeper and deeper into debt every day with imports climbing much faster than exports. The American people know this. One can hardly find anything made in this country anymore. In fact, the trade deficit is so huge, it is now three-quarters of $1 trillion and rising and, with it, our foreign indebtedness. This widening gap is likely to reduce our overall growth as a country.

Now, our thirst for imported petroleum as a part of this increase rose 33 percent. And the Secretary of Treasury is living in another world when he says the reason that we are going into hock is because other nations are not growing fast enough, when, in fact, other nations are the very countries that are lending us money to make up this gap.

The New York Times says a growing number of economists worry that the United States has become locked into
becoming the world’s consumer of last resort, a role that is leading to ever higher levels of foreign indebtedness financed in large part by central banks of China, Japan and other Asian countries.

And not just Asian. As this chart illustrates, the amount of debt being held by foreigners is going up. Japan, over $100 billion over last year to a level of $681 billion. They are literally owning us, owning our debt.

Europe, $471.8 billion. And a lot of that, over $230 billion, through the London markets, particularly the oil markets. So this masks some of the buying that actually is occurring through the Middle East.

China, Hong Kong, at a level now of over $295 billion. And those kinds of ownership of our assets and debt means we owe them interest. And that level of interest is what I want to discuss tonight.

The proportion of our foreign-held debt is now nearly half of what we owe as a country. Nearly half. It has grown exponentially, and the interest we pay on that debt is one of the largest components of the Federal budget. In fact, in this coming fiscal year, the interest alone that we will pay the foreigners for their borrowings to us will be nearly $100 billion. Take the amount that we have to pay Hong Kong and China for what they have lent to us. We will pay them over $13 billion. How much is $13 billion? $13 billion is nearly equal to the money we spend as a Federal Government financing student loans in the Pell grant program to make post-secondary study a reality for thousands of students.

How about the $30 billion in interest that we will owe Japan, when you think that that amount is $6 billion more than we devote to funding the No Child Left Behind Act. And it is twice as much as we spend on funding employment training and unemployment services combined.

In Ohio, for example, this past week only one school in the northeastern part of Ohio got funds in order to do additional job training, though President Bush campaigned very hard on that issue in Ohio. Ohio did not get 15 grants or 20 grants, we got one.

Our money is going to pay interest to foreigners who are lending us money. We are cutting money for Head Start by more than $11 billion, and yet we are paying over $100 billion to foreign interests who are lending us money. We cannot afford to pay TRICARE for the needs of those in the Guard and Reserve, many of whom are returning home and finding their benefits are cut, and we have a shortfall in the veterans affairs budget. All of those accounts put together are a pitance compared to the interest that we are paying on our own debt.

I have introduced, along with several of my colleagues on both sides of the aisle, H.R. 4405, The Trade Balancing Act of 2005, which will require that in cases in which the annual trade deficit, that is the trade gap, the difference between imports and exports, between the United States and another country is $10 billion a year for three consecutive years, the President must take the necessary steps to create a more balanced trading relationship with that country.

I am asking my colleagues to help communicate this message to the President, to our colleagues, before a foreclosures sign is posted on our Treasury building. There could be nothing more important that this Congress could do than to turn a sound economy over to the future.

Madam Speaker, I will place these additional articles in the Record. Let us put America back on an even keel.

TRADE DEFICIT HITS RECORD, THREATENING U.S. GROWTH
(By Edmund L. Andrews)
WASHINGTON, Dec. 14.—The United States’ trade deficit ballooned to a record in October, the government said Wednesday, with imports climbing much faster than exports even though prices for imported oil declined. The trade deficit widened by $3 billion to $68.9 billion, the Commerce Department reported on Wall Street that the gap would narrow and signaling that the nation’s huge trade imbalance has not begun to stabilize.

The nation’s trade deficit hit its lowest level in 2005, to $9.37 billion. Most economists expect the trade deficit to force the administration to take action against countries that consistently run trade surpluses with the United States of more than $10 billion a year.

Even some Republicans expressed dismay at the size of the deficit.

“Small business owners in Maine and across the nation are fighting to remain competitive with countries such as China that flagrantly disregard fair trade practices,” said Senator Olympia J. Snowe, Republican of Maine.

The Treasury secretary, John W. Snow, said the administration was pushing countries like China, but he added, “the trade deficit was largely a result of slow growth in other countries.”

“If our major industrialized trading partners were growing faster, the U.S. wouldn’t have such a large trade gap,” Mr. Snow said at a briefing on the economy with Commerce Secretary Carlos M. Gutierrez and Labor Secretary Elaine Chao.

The American economy grew at an annual rate of 3.8 percent in the first three quarters of this year, far faster than either the European Union or Japan.

A growing number of economists worry that the United States has become locked into being the world’s consumer of last resort, a role that is leading to ever higher levels of foreign indebtedness financed in a large part by central banks of China, Japan and other Asian countries.

Robert Sinche, a currency strategist at Bank of America, predicted on Wednesday that foreigners would provide $1 trillion in American assets, about 30 percent of its gross domestic product, by the end of 2006.

IRAQ AND THE 56TH BRIGADE
Mr. GOHMERT. Madam Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore. (Mrs. SCHMIDT.) Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GOHMERT) is recognized for 5 minutes.

Mr. GOHMERT. Madam Speaker, it was truly great to have the 56th Brigade home this past weekend from Iraq. Commanded by Colonel James Red Brown of Lindale, Texas, they did a great thing this past year. It was the largest deployment of troops from the Texas reserve unit since World War II. This was not just a difficult year in their own and their families’ lives, it was a historical year.

Many believe that the area Iraq occupied was where mankind had its beginning. There, in the cradle of mankind,
Iraq, had an historic election of representatives to write a constitution. It drafted and approved its constitution, and now today, because of the efforts of so many military members, including the 56th, that area elected its first true representatives to lead a democratic form of government.

There are those who have said it is a quagmire in Iraq and it is a mistake for us to be there. Some made these statements because of personal heartache. Some, on the other hand, were made from a political motivation, some from disdair for our president and a desire to see his efforts fail, even though it risked world stability and national security.

But our soldiers were there. They know they have done a great thing. They have seen the admiring faces of Iraqi children that were never present in Vietnam. They have heard gratitude from many there in Iraq, our soldiers have. We have not heard as much here.

Today was just an incredible day in the history of America. Those who have been serving in Iraq, had an historic election of representatives, some did not. They risked the threat of death. They are not out of the woods. They can see the home lights through glowing from where they have gotten.

There is a quote from the 1800s by philosopher John Stewart Mill certainly applies to our present situation. He said, “War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth it, and they are our heroes. They and their families have sacrificed for us, and we are grateful.

My friend from Lindale, who is also a Texas Aggie and a citizen soldier, Colonel Brown, is an American patriot. He and his distinguished command Sergeant Major Chambless led a band of great American patriots, and they led them well.

The quote from the 1800s by philosopher John Stewart Mill certainly applies to our present situation. He said, “War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse. The person who has nothing for which he is willing to fight, nothing which is more important than his own personal safety, is a miserable creature and has no chance of being free unless made and kept so by the exertions of better men than himself.”

Those who have been serving in Iraq and Afghanistan and in harm’s way on our behalf are some of the better people of whom Mills spoke.

Today is an incredible day in Iraq. That for which we have been hoping and fighting happened. The Iraqis elected their first elected officials who will preside for the next years to come. There have been threats this year against any Iraqi who voted. Those Iraqis who stuck their fingers into the ink knew they were readily identifiable for two to three weeks to any terrorist that wanted to kill them. What courage. We have voters here who will not even go out if it sprinkles or rains, and yet they were willing to risk the threat of death. They are not out of the woods. They can see the home lights though glowing from where they have gotten.

It was particularly distasteful though that so many had stepped up to their histrionics to “pull out now.” Have you wondered why the surrender call became so shrill just before this historic election? Many of those knew if things went too well, the President’s numbers might go up. So, some had good motives, some did not. They risked the national security.

Now, because of the work of our heroes in Iraq, a great thing happened today, and we are grateful. May God comfort those who have paid with the sacrifice of a loved one in our Nation’s service and those who fight, our defenders, our champions, our servicemembers. God bless their efforts and keep them safe. And through their valiant efforts may God continue to bless our America.

To those in Iraq, I say I look forward to seeing you in just a couple of days.

TRIBUTE TO SENATOR WILLIAM PROXMIRE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. KIND) is recognized for 5 minutes.

Mr. KIND. Madam Speaker, early today the people of Wisconsin and this great Nation lost a great public servant, and I lost a good friend and a political hero, Senator William Proxmire. Senator Proxmire passed away at the age of 90 after a long and courageous battle against Alzheimer’s. I had the honor and privilege of spending some of his final days with him as he spent his last days fighting the disease.

Senator Proxmire was a true champion of consuming public spending reform. He was a valiant leader for our country and the people who live here. He believed with every fiber of his being that we need to stop the proliferation of nuclear weapons throughout the world which he viewed as potentially the ultimate genocide of human race.

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Senator Proxmire also delivered a speech on the Senate floor about the need to stop the proliferation of nuclear weapons throughout the world which he viewed as potentially the ultimate genocide of human race.

People back home in Wisconsin viewed him as a maverick because he told it like he saw it when it came to not supporting large special interests affecting the people and the environment. He was tireless in standing up for the little guy and treating everyone decently and fairly. He believed, as many of us do today, that there is too much big money in government and too much influence of large special interests affecting the people’s agenda. He was a strong advocate for getting the big money out of politics and he supported campaign finance reform.

His marriage to Ellen Proxmire was a true partnership in every sense of the word. Ellen and the family endured the demands and sacrifice of public life and were by Bill’s side during the difficult years battling Alzheimer’s.
their courageous battle, they helped open the eyes of many people about the urgent need to find a cure for this horrific disease before the national tidal wave hits our country in future years due to our aging population.

Much has been learned about being an elected official I learned from Bill Proxmire. That is why I am proud to call myself a Proxmire Democrat. His legacy will endure, whether it is the call for greater fiscal responsibility with the people’s money, or leveling the playing field for people who work hard and play by the rules.

My thoughts and prayers are with Ellen and the entire Proxmire family. I hope they find some peace and comfort in the knowledge that Senator Proxmire touched many lives. He was loved by many, and he will be missed.

May God bless Senator Proxmire and take him into His care.

THE DAWN OF A NEW DAY IN IRAQ

Mr. GINGREY. Madam Speaker, I ask unanimous consent to speak out of order.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGREY) is recognized for 5 minutes.

Mr. GINGREY. Madam Speaker, I feel honored this evening as we approach the midnight hour here in Washington to realize that it is the dawn of a new day in Iraq. The sun is coming up almost as we speak, and I raise my hand and my index finger in symbolic fashion to salute the 10.5 million people who went to the polls in that historic election on December 15.

Madam Speaker, listen to what some of the Iraqi people have had to say about how they feel about the vote that was cast yesterday. “This day is revenge for Saddam.” Kurdish voter Chiman Saleh, whose two brothers were killed by Saddam’s forces. The ink-stained finger after he voted.

“The time has come to build Iraq with our own hands and to use the great wealth that God has granted to Iraq, to rebuild Iraq so that we can turn our poverty into wealth and our misery into happiness.” Prime minister al-Jaafari.

Finally, from the Associated Press, some good news: “So many Sunni Arabs voted that ballots ran out in some places. The strong participation by Sunnis, the backbone of the insurgency, Madam Speaker, bolstered United States hopes that the election could produce a broad-based government capable of ending the daily suicide attacks and other violence.” From the Associated Press. Good news indeed.

Madam Speaker, listen to what General George Casey, the Multinational Force Commanding General in Iraq, said today: “The Iraqi people have had a great day. It is their third national poll this year: January 30th elections for the Transitional National Assembly, 8.5 million people voted; October 15th national referendum on the constitution, 10 million people voted on. December 15th, the permanent assembly, 10.5 to 11 million people voted, and many, many Sunnis. Voter turnout was high. We expect it to be at or above the October level. Turnout in the Anbar Province in western Iraq, the face of a ruthless and a resilient insurgency, they include the transition to sovereignty, elections for a transitional government, a peaceful transition from the interim to the transitional government, creating and approving of the constitution, the building of Iraqi Security Forces to more than 200,000, and today, the elections for a permanent assembly.”

Madam Speaker, as we close out, I just want to say that this is also a great day for those 2,175 soldiers, men and women, who have given their lives, 15,000 others who have been severely injured, and 30,000 or more innocent Iraqi people, many of them women and children, who lost their lives for this cause. This is a great day.

This gives some peace and comfort, I am sure, to the Brown family of Atlanta, who gave their son Tyler, a First Lieutenant, in this battle, as he was killed in action; and the Johnson family of Armuchee, Georgia, in my district, when Joe and Janet gave their precious son Justin.

At least some comfort will come to these families at this time of Christmas when everybody else is celebrating and they have a certain sadness in their heart that will never go away. They will know that their sons did not die in vain, that this is the success that they were fitting and dying for. God bless them, God bless the Commander-in-Chief, and God bless America.

RECALL DESIGNEE

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

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 12 o’clock and 4 minutes a.m.), the House stood in recess subject to the call of the Chair.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker’s table and referred as follows:

5688. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department’s final rule Federal Acquisition Regulation Supplement: Information Technology Equipment — Screening of Government Inventory (DFARS Case 2003-D004) received December 5, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5689. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department’s final rule Defense Federal Acquisition Regulation Supplement: Contract Modifications (DFARS Case 2005-D029) received December 5, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5690. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department’s final rule — Defense Federal Acquisition Regulation Supplement: Contract Administration (DFARS Case 2003-D023) received December 5, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5691. A letter from the Acting Director, Defense Procurement and Acquisition Policy,
Department of Defense, transmitting the Department’s final rule — Defense Federal Acquisition Regulation Supplement; Extraordinary Contractual Actions (DFARS Case 2003-D048) received November 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5692. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department’s final rule — Defense Federal Acquisition Regulation Supplement; Acquisition of Telecommunications Services (DFARS Case 2003-D055) received November 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

NOTICE
Incomplete record of House proceedings.
Today’s House proceedings will be continued in the next issue of the Record.
The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

O God, whose spirit searches all things and whose love bears all things, arise and lift up Your hand as we wait patiently for You. Give Your light, O God, and take away our darkness. Put a new song on our lips for we put our trust in You. Place Your precepts in our minds that we will delight to do Your will. Withhold not Your tender mercies from us, for Your loving-kindness keeps us alive.

Bless the Members of this body. Give them patience and cheerful endurance. Place peace in their hearts and serenity in their minds. Inspire them with an increased understanding of the scope of their task as Your servants. Stretch forth Your right hand to help and defend us all. Encourage us to seek new depths of dedication. We pray in Your wonderful Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, we will begin consideration of the Labor-HHS conference report directly, with Senator HARKIN controlling the first 90 minutes. At the conclusion of that time we will return to the PATRIOT
Act conference and have a period of debate for the next 2 hours. We will recess at approximately 12:30 until 2:15, for a weekly policy luncheon.

At 2:15 we will have another block of time equally divided until 3:30. At 3:30 we will cast a roll call vote in that order on the following four motions to instruct conferees relative to the spending reduction bill. Those will be the first votes of the day. After that fourth vote, conferees will be named to that reconciliation measure. We will likely cast additional votes in that 3:30 sequence and we will announce those votes as they are ordered.

I will have more to say on schedule as we proceed over the course of the day, both for the remainder of the day, this evening, this week, and possibly this weekend.

In the meantime, I will continue to remind Senators and ask that they do remain available over the course of the day and keep their schedules flexible for these votes.

I yield.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of the conference report accompanying H.R. 3010, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3010) making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 2006, and for other purposes (H.R. 3010) “making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 2006, and for other purposes.”

The conference report is printed in the House proceedings of the Record of December 14, 2005.)

The PRESIDENT pro tempore. Under the previous order, there will be 90 minutes under the control of the Senator from Iowa, Mr. HARKIN.

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

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

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. COBURN). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, under the rule, I have 90 minutes—some of it has already been used up in the quorum call—to speak on the Labor, Health and Human Services, Education, and Related Agencies appropriations bill that is now before the Senate.

I again ask any Senator who wants to come over and speak on this time to try to be here before 10:30. I would be glad to yield time to Senators who want to come over and talk about this bill and why this bill should not be passed.

At this time of the year when we are seeing all the festive holiday decorations, Christmas trees, all the lights around the country about the joy of Christmas. It is a mood of being generous and understanding that it is the season for giving. It is the season for thinking about those who may be less fortunate than ourselves. It is also the time of the year when most families of means get together and think about their giving, how they are going to support charities or charitable giving toward the end of the year. It is true in churches all over the country and many nonprofit organizations. This is the time of the year when people decide to give money to the churches, to everything, the Salvation Army, to all kinds of nonprofits. It is the time of the year when we remember “A Christmas Carol” by Charles Dickens, the wonderful stories and the Christmas Carol played in high school plays and theaters all over the country every year at this time.

Charles Dickens “A Christmas Carol,” the story of Ebenezer Scrooge. "Bah humbug"—that is his familiar saying about Christmas, “bah humbug”—this tight man, ungenerous, miserly, stingy, with no feelings of compassion whatsoever to those less fortunate.

We all know what happened in “A Christmas Carol.” He is visited by the ghosts of Christmas past and the Christmas future. He then begins to see clearly who he has been and what he has stood for is wrong.

The wonderful story about Charles Dickens and “A Christmas Carol” is, at the end, Scrooge becomes compassionate and generous and changes his ways.

It is a wonderful story for this time of the year. If only life in Congress imitated that, if only Congress could follow the example of Ebenezer Scrooge in the final act of the play. I am sorry to say, in terms of the appropriations bill before us, the bill that funds those things that help those who are the poorest in our society these days, to reach down, to give everyone hope, and try to make our society a little bit more fair and more just—that is what is in this bill. That is what this bill is about. But, sad to say, in this bill, as it is before us, Ebenezer Scrooge—the first Ebenezer Scrooge, the one before he changed in the final act—is in this bill. Scrooge reigns in this bill.

My friend and distinguished senior committee, the Senator from Hawaii, DAN INOUYE, once said of the Defense appropriations bill that it defines America. I have thought about that over the years. He said that a long time ago. I have thought about that over the years, as I have been chairman of the subcommittee and ranking member and chairman ranking member. Both Senator SPECTER and I have changed places on this subcommittee now I think going back over 15 years. I have thought about that, that this is really the bill that defines America.

So how do we want to define America? As the haves with the beautiful Christmas tree, with all the lights, nice cars, warm clothes, good food, who send their kids to the best schools, live in the best neighborhoods? That is America? That is it, that is America? And then down below we have people barely scraping to get by, who don’t know how they are going to pay the heating bills in that kind of weather, disabled, the poor, those who want to get job training, they have lost their job, but they want to work and are looking for job training assistance; families with young kids, they want to get their kids to a Head Start Program so that their kids, too, will have a decent shot at the American dream; or families who are low income and have poor schools to go to and so they want to at least have good teachers and good facilities and good programs and textbooks and things for their kids so that their kids, too, can get up on that ladder of success; or families who live in areas who have no health care insurance, have no health care, and the only thing they have to go to is the community health center for their health needs, and that is there for them.

I don’t know. What do we want? Do we want an America where at least at this time of the year we think generously? In this beautiful country that we have, all of the riches that we have, can we not find it in our hearts to pass a bill that at least, at least, does not back down from where we were before? You would think that would sort of be the minimum. You would think at least at this time of the year we would say, well, we are not going to do any more for low-income people, but we are not going to cut them back any more either. You would sort of think that would be the bottom line, to say, of all the appropriations bills that this Congress has passed this year, this is the only appropriations bill that is cut below last year’s level. This bill, the one that funds education and health, the one that reaches down to help low-income people, this is the one that is cut, the only one, the only one that is cut.

Please, someone explain this to me. Interior appropriations, Transportation appropriations, Agriculture appropriations, Department of Energy appropriations, Commerce-State-Justice appropriations, Homeland Security, Energy and
Water appropriations, Legislative Branch appropriations—all above last year’s level. Labor, Health and Human Services, and Education? Cut below last year’s level.

Ten days before Christmas, Congress is poised to deliver a cruel blow to the most disadvantaged members of our society. Sadly, unlike in the Dickens tale, there is no sign of remorse, no nagging conscience, no change of heart at the end of the day.

The bill that we passed—and here I want to just, again, pay my respects and my esteem for our distinguished chairman, Senator SPECTER. He had a tough job. We worked it out. We passed a good bill, a decent bill in the Senate. I think it was unanimous, if I am not mistaken—I am sorry, it was 97 to 3. Well, that is almost unanimous, 97 votes. Both sides voted for the bill that Senator SPECTER crafted and that we worked together on. But then it went to conference, and the House came in and had their position. Again, I just remind Senators and others that what happened is that it came out of conference—I didn’t sign the conference report. Many of us would not sign the conference report because of these cuts. The bill went to the House last month, and the House rejected it. Then they reappointed conferees, as we did, and we met in conference on Monday evening, this last Monday evening, 3 days ago, for 44 minutes—44 minutes, with very little debate. The gavel was pounded, and we adjourned subject to the call of the Chair. Of course, the Chair never called us back, the Chair being the House Member. The House ran the conference this year. So they never called us back.

Now they jiggled a few things around, I guess, dealing with rural health—I will have more to say about that in a second—to get the votes in the House. Well, the House passed this bill yesterday by two votes. I think it was 215 to 213, if I am not mistaken. Two votes. A very contentious bill, two votes. Now we have it before the Senate. That is sort of the history.

Now it is up to us whether we are going to step back and say: No, we will not accept this bill. We will not accept cuts to these vital programs that I am about to go through here. But we will at least go on a continuing resolution until January, in January, when we come back, there will be a bit of change of heart and we can do a little better on this bill.

This appropriations bill, as I said, funds things such as the Head Start Program, community health centers, special education, job training, programs that help the neediest in our communities. As I said, most people who are watching today would probably expect these programs to get an increase this year because we know the poverty rate has gone up in this country, and we would say: Please, we would not cut it below last year’s level. As I said, this is the only appropriations bill cut below last year’s level, and that is about $1.4 billion less than last year. This bill cuts education for the first time in a decade, the first time since 1996 has education been cut. No Child Left Behind, all of us here, I am sure, hear a lot about that when we go back to our home offices and comments about No Child Left Behind. The biggest complaint about No Child Left Behind is that they are not getting the money by which to meet the mandate. In other words, it is like an unfunded mandate on our schools.

Now, with No Child Left Behind. I was at the table when we met with President Bush in 2001 to get this bill through. At that time, it was agreed upon—at least I thought it was agreed upon—that we would have a funding stream to meet the mandate. The President agreed to that. His people agreed to it. The President himself agreed to that. Yet we are now $13 billion less than what we said we were going to be at. 3, 4 years ago. So it is no surprise that the communi-ties are upset about No Child Left Behind. They are being told to do certain things, but they are not being funded to do them.

Well, here we are. We are cutting it again, this year with a 3-percent cut, so there will be $780 million this year less than last year. That now puts us at $13.1 billion below the authorized level. It leaves 120,000 children behind.

Now, what do I say about that? That is title I. I mentioned the fact that people who live in low-income areas and go to schools that do not have a lot of money need help. They need what we call title I services, the low-income children. It is $9.9 billion below the authorized level. That means that title I services to 120,000 children, who are currently eligible to receive them, will not receive them next year. Think about that: 120,000 children who are now eligi-ble to receive title I services in public schools will no longer receive those services next year.

What is the American dream for those kids? What about it? What about the American dream for them? And because of the programs we had in the past—Head Start, title I, all the other programs—we have been able to get kids of low income through secondary school. Now they want to go to college. Well, back in the 1960s we passed a program in the Senate to provide large-scale federal aid to education. We had a distinguished Senator, Claiborne Pell. It was grants to low-income students so they, too, could go to college.

Under this bill, the maximum Pell grant award is frozen for the fourth year in a row. For the fourth year in a row, we have frozen Pell grants. That means the purchasing power of a Pell grant today is about one-fifth of what it was 20 years ago. So if you are low income, and you want to go to college, it would be better if you had gotten it 20 years ago. But, for the Pell grant, you would have gotten you a lot further then. Today it is worth about one-fifth of what it was then.

And special education: 28 years ago, this Congress passed the Individuals with Disabilities Education Act to meet a constitutional requirement that we had to provide equal and appro-priate education for children with dis-abilities—a constitutional mandate. At that time our goal was to have the Federal Government provide at least 40 percent of the additional cost of educating kids with disabilities. That was our goal: We would provide 40 percent of that addi-tional cost to our local school districts. That was 27 years ago.

Last year, we had reached 18 percent. In other words, by last year, the Fed-eral Government was providing 18 per-cent of the additional cost of special education. Under this bill, you would think we would be going forward to 40 percent. This bill goes backward. We are now at 17 percent. We are going in the wrong direction.

How many times have we voted on this issue to fully fund special educa-tion? We keep voting to have special education fully funded. We have all these meaningless votes. When it comes down to paying for it, we are going in the wrong direction. We are going in the wrong direction, down to 17 percent this year.

Well, that is the story in education. The story in education is very simple. If you come from a well-to-do family, and you live in a good neighborhood, and you have great schools and high property taxes, don’t worry, the Amer-ican dream is there for you. But if you live in a low-income area, with low property values, low property taxes, you have poor schools, tough luck, you were not born to the right parents. Tough luck. That is what this bill is saying to you. That is education.

Look at health. Look at the health programs. What do we do about health? Again, if you are a Member of the Sen-ate, and you serve in the Senate and the House probably think: Well, probably everybody lives like we do. Everybody makes $150,000 a year. You have a couple of houses, drive nice cars, wear nice clothes. We send our kids to great schools.

Well, I don’t know, if I am not mis-taken, as to the population of the Sen-ate, out of 100 Senators, I think—what is it—80 now are multimillionaires? There is nothing wrong with that. There is nothing wrong with having money and achieving the American dream and having nicer clothes, a nicer car, a nicer house. There is nothing wrong with that. That is a big part of the American dream. But it seems to me that those of us who have been blessed with good health and good for-tune, and who have sort of made it to the top of that ladder, it is incumbent of us that we leave the ladder down for
others to climb, too, not pull it up behind us. And, there are Senators and Congressmen in this body and in the House who are well to do, who have been blessed with good fortune, who understand the necessity of leaving the ladder down, and who fight constantly to make sure that our Federal Government, as a Congress to reach down and help those less fortunate than ourselves.

There is more true than in health. There is more true than in health. We have tried over the years, since Congress cannot get a national health insurance program passed, to at least sort of block and tackle, if you will, to fill in the gaps, to help make sure people of low income can get at least some access to decent health care.

One of the most important of those is the community health centers. President Bush himself said at one time that his goal was to have a community health center—it was a State of the Union Message. I was there. President Bush said he wanted to have a community health center in every poor community by 2008, and we all rose and applauded. I believe in community health centers. Obviously, the President does, too. But where is the President now? Because in every bill, not one new community health center will be authorized for next year—not one. Not one will be built in the United States.

Health professions. We want to recruit the professionals to serve in parts of the country. It is slashed by $185 million.

National Institutes of Health: 355 new research grants will be cut. It is the smallest percentage increase in NIH. Actually, it is level funded. It is less than 1 percent, so you might as well say NIH has been level funded. This is the first time since 1970—35 years—that NIH has not received an increase.

Rural health programs: cut by $137 million and nine vital emergency medical services, health education training centers, healthy community access programs, geriatric education centers—are closed.

This one I think deserves a little bit more attention. The geriatric education centers. We know our society is aging. We know geriatric care is a kind of a specialty. We want health professionals trained in geriatric care so the elderly among us will be healthier, will have better diets and nutrition, will have better exercise, and will have more sociability.

We know when you do those modest things, you keep the elderly out of nursing homes, you keep them out of the doctors' offices, you cut down on Medicare and Medicaid.

Well, here is a map that shows States that will lose geriatric centers. All the stars are geriatric care centers that are going to be closed. Two weeks before the 78 million baby boomers in this country begin to turn 60—that is next month, January—we are going to lose all these centers. In Iowa, we have a center at the University of Iowa School of Medicine. There are osteopaths, nurses, dentists, chiropractors. There is a big need. Iowa has the highest percentage of citizens over the age of 85—the highest of any State in the Nation. This bill eliminates the geriatric centers at the University of Iowa. So that is education.

Let's look at labor. We know that people are unemployed and they want to be retrained. The Department of Labor is cut in this bill by $360 million, the biggest cut ever made to the Department of Labor—the biggest ever, at a time when we keep hearing stories about how China is training all these engineers and scientists and doing all this stuff. We need to get people retrained. We need adult job training and youth job training. Adult job training is cut and youth job training is cut. I guess we are telling people that you may have had a job and that job has ended, but you may want to get into another career, where they will train you on your own. You are not going to get any help.

People cannot do that. They are broke and out of work, and they have kids and families. Rather than advancing, they will go out and find some job that will at least put bread on the table, when they could be getting job training that would allow a better job and higher income in the future. This slashes employment services by $39 million—an 11-percent cut in employment services.

What are employment services? They are to help people get employed, to get a job. Yet we are cutting it, even though we know the rate of unemployment has gone up. I don't know how anybody can do this, especially at this time of the year.

Let's take one more look at LIHEAP, the Low Income Heating Energy Assistance Program. This bill provides no additional funding for LIHEAP. We know that fuel costs are skyrocketing. In Iowa, natural gas prices are up 40 percent from last year. Hawk-eye Area Community Assistance in southeast Iowa reports that LIHEAP funds are likely to run out in mid-January, one month before the peak of the heating season in this State. This bill fails to keep up with this overwhelming need.

I was in Iowa a couple weeks ago and I met with some people who applied for LIHEAP. I remember one individual who is disabled and lives by herself. Her monthly cost for fuel has gone up about 50 percent for what she pays every month. I think she qualifies for $232 in LIHEAP funding. I mentioned that to somebody after I met with these people. I mentioned I had met with a woman who was disabled lived by herself and she qualified for $232 in energy assistance to pay her heating bills. One of the individuals in the group I talked to said, “That ought to pay her monthly bill.” I said, “Wait a second, that $232 is for the year.” They thought it was for the month. I said that is for the year—October, November, December, January, February, March, and probably April. That person said, “They didn't realize that,” she said, “I thought it was for the month.” I said, “No, that is for the whole year.”

Yet we are cutting back on that. We are not providing enough money to take into account the higher price of propane and heating oil and natural gas prices. I have heard: Don’t worry, Harkin, we will come back in January and, if we need to, we will pass a supplemental or something at that time.

Don’t hold your breath. What about the people who are out there who don’t know how to pay their heating bills, who need to get propane delivered, especially in rural communities such as where I live? We have propane tanks. I cannot cut them off; they cannot cut you off. They say don’t worry, Harkin, we will come back in January and February. What about the people who were there and they cannot cut you off, they can cut you off of propane.

So we are going to come back and do this in January or February. Yet we will let anxiety rise, let people worry about it. I can tell you right now, in the area of the country where I live, we have propane tanks, we have LIHEAP. We are going to have people living on the edge. They have food stamps, they are getting LIHEAP, many are disabled, and many are elderly. They are thinking, I know that next month is going to be cold—in January and February. Maybe I will cut back a little bit on some of the food I have been buying and I will cut back on some of the things I want to do in order to have to cut back on the heating bills. That is what is happening now. There is anxiety out there. We are saying: That is okay, be anxious; we will come back in January or February and fix it.

Is that any way to treat people? Put yourself in that position. What if you didn’t know whether you could pay your heating bill next month? What if you didn’t know whether you were going to be able to pay? They say don’t worry about it. We will come back in January and February and we will fix it.

When we passed a continuing resolution at the end of September, I took the floor to beg my colleagues to reject this part of the continuing resolution that would cut the community services block grants by 50 percent. Well, we didn’t get that done. Then it was put on the DOD bill, and they told us we will take care of that. The funding for community services block grants goes toward Head Start and LIHEAP. In other words, if you are going to apply for LIHEAP, you usually go to some agency—an
area agency on aging or you go through one of these community action agencies. They help you with the paperwork and do the necessary things to show that you qualify. If you don’t have that, chances are you probably wouldn’t get the help you need.

In our continuing resolution, we cut that by 50 percent. We are told we will take care of it, we will fix it. But that was in September. We have gone through October, November, and December—3 months—and the community services block grant is still cut by 50 percent. They say they will take care of LIHEAP, too. When? In March, April or May?

So whether it is health, human services, education, medical research at NIH—no matter what it is in this bill—what can I say? It is awful. This bill is awful. It is not something we ought to hold our heads up and be proud about. We ought to be ashamed of this, ashamed that we cannot find it in ourselves to invest in the needs of the poorest people in our country, the neediest.

This bill ought to be rejected, and we should go to an honest continuing resolution, not one that cuts programs but one that at least keeps last year’s level, so we will come back and fix it again next year. But this bill is not deserving of our support. It sends the wrong—I don’t want to say it sends the wrong message, that is not it; it doesn’t do the right thing. It doesn’t do what a generous, compassionate nation ought to do for its neediest citizens.

Mr. President, I see my distinguished colleague, Senator Kennedy, is on the floor. Again, I yield the floor to him. There has been no one who has spoken more passionately and forthrightly about the obligation we have as public servants—of the need of our neediest citizens than Senator Kennedy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I join with those on our side and I think most Americans in commending the Senator from Iowa, Mr. Harkin, for his steadfastness and determination to make sure we are a fairer country, a country that is going to offer better opportunities to many of those who have been left out and left behind.

I listened carefully to his excellent presentation earlier in outlining the choices, the alternatives for the American people presented in this particular legislative proposal. Once again, he has made the convincing case that we can, as Americans, do a great deal better in terms of those who have been left behind. With this recommendation that has come back from the conference which represents basically the Republican positions, we are going to lose millions and millions of Americans who are going to have a dammer Christmas this particular year.

There is an extraordinary irony that we are within 9 days of Christmas Eve when families will gather around the Christmas tree, exchange gifts, will attend church services, and think about the spirit of Christmas. When they realize what has been happening in the last 4 years, and this Republican bill contains a $59 million cut in education programs. Look at America’s priorities as reflected in education. One can say money doesn’t solve everything. It doesn’t, but it is a clear reflection of a nation’s priorities. This chart is backed up with budget figures. I have the budget items right here that reflect all of this. They indicate that this is what we are saying to Americans on the issues of education.

In my State, we have made some important progress in education. We have some important progress. Quite frankly, we put in place in our State a number of the reforms that were eventually put into No Child Left Behind—smaller classes and better trained teachers. In the NAEP test, which is the national educational progress, Massachusetts scored higher than all other states in reading, and tied for first in the Nation in math. In Boston, we saw a 19 point increase in the number of Hispanic students proficient on the increased the maximum need-based aid for African American students. These are the first major breakthroughs in the history of our country in these disparities. We are beginning to see progress because we have been investing in children.

Not anymore. Here is where we are going: Right back to the good old bad days in terms of a nation’s priorities in education.

Today, we will have an opportunity, on the issue of education, to reaffirm what we did in the Senate. That was a bipartisan effort that produced a decent bill. We met our obligations under what they call reconciliation and the bill went through. In an effort, led by our chairman, Senator Enzi, and with the assistance of Republicans and Democrats, what did we do? We—in our committee and on the floor—virtually unanimously in our committee increased the maximum need-based aid to Pell-eligible students to $4,500.

Before that, we haven’t been able to increase the maximum Pell grant. We have been flat on these Pell grants. These affect the neediest students. There are 400,000 still don’t go to colleges, who are academically qualified to go to colleges, because they can’t afford the dramatic increase in the cost of tuition.

The Senate did something about it. We increased those grants to $4,500, and we gave an additional boost to those students in their junior and senior years who are going to be studying math and science. Why math and science? Because as all of us understand, if we are going to have an innovative economy, we are going to have to invest in the degrees that are going to permit us to have an innovative economy. That is necessary not only because we need an invigorated economy, but we need national security and defense. We were able to do this in the Senate.

What has the House of Representatives done? The House of Representatives has raised the interest rate caps for students to 8.25 percent.

At that rate, the typical borrower will pay as much as $2,600 more on
loans. They raise the origination fees on direct loans in the short term, which will cost the typical borrower $400; they impose a new 1-percent fee on all students who consolidate their loans. It is going to cost students, parents, and families thousands of dollars more to send their children to college. That is where the House of Representatives goes—increasing the cost of college for working families who are already struggling. That is why we believe it is so important to stop that. Senators have held us to the provisions in the Senate bill. We meet our responsibilities, and we provide the kind of help which is so necessary for students in this country. That is what our bill does.

We will have a chance to vote on our motion to instruct conference this afternoon. We do not always have a chance to offer amendments or motions to instruct conferences on every subject matter but we will in terms of the issues on education and higher education. I want to mention one other item that the good Senator from Iowa has spoken to because I think it is enormously important to our fellow Americans. Here is the cover of Nature Magazine, the original human genome paper. The Senator from Iowa was visionary in ensuring that NIH was going to move forward in giving the support for the mapping of the human genome.

With the mapping of the human genome, we have seen all kinds of possibilities in terms of health care and medical breakthroughs. We have seen medical breakthroughs in the historic diseases that have affected every family across America, including all of us in the Senate and the House of Representatives. We have seen breakthroughs addressing the problems of Alzheimer's, the problems of Parkinson's disease, the problems of cancer, the plethora.

We have begun to see enormous progress that is being made. We are at the tip of the cusp. That is because we have had bipartisan cooperation. The Senate was working together, as we have in education. We worked together. Democrat and Republicans, all during period from the late 90's through 2002 to try to get investment in breakthrough research. Just about every scientist who has appeared before the Senate's Committee on Appropriations says this is the life science century. The possibility of achieving breakthroughs that benefit every family in America are virtually unlimited if we invest the resources.

Does anyone think that is what this administration is doing? No. They say, let us give $95 billion more in tax breaks to the wealthiest, and let us cut all of that potential right off at the knees. That is what they have done. That is what is before us. That is why the Senator from Iowa has said that this is an unacceptable budget. Do not take our word for it. Look at the budget, the choices that have been made. If one goes back, at least in my State, and talks with families, they will probably be talking to you now about the Medicare D Program and how they are going to deal with the confusion. But underneath it all, when it comes to the end of the day, they will say: What are the possibilities of getting some real breakthroughs? My father has Alzheimer's, my uncle has Parkinson's disease, what are the real chances of doing something about these diseases? We have to take care of them. We love our family members, what are the possibilities of finding breakthrough treatments to save them?

Every scientist and every researcher was moving along on this. We thought we had an agreement, a love between the stem cell legislation, another area on which the Senator from Iowa has been a leader. We thought we had an agreement by the leaders that we were going to bring this up. The House of Representatives has act on it. My State of Massachusetts has act on it. Other States have act on it. What is wrong with the Senate? They say, we have to take more time to pass more tax giveaways to the wealthiest individuals, we cannot afford to cut $95 billion to do the stem cell research. No, sir, we cannot do that. I say, this is the priority. That is why the Senator from Iowa is as worked up as he is.

This is the reality of the NIH budget. Dr. Landis, who is the Director of the National Institute on Neurological Disorders and Stroke, says: If we are to fund new programs, we will have to stop funding old programs. For every serious grant investigator will be unfunded. For every senior investigator who's reduced, it means a junior investigator won't be.

Mr. HARKIN. Will the Senator yield on that?

Mr. KENNEDY. Yes.

Mr. HARKIN. I appreciate the Senator pointing this out because yesterday we got an article in the newspapers from NIH. A lot of times people ask what happened with the human genome project, what is it leading to, mapping of the entire human genome. A couple of years ago, I paid my first visit to Cold Spring Harbor Laboratory in New York, Long Island. It is run by James Watson, who is one of the co-discoverers of the structure of DNA. What they had embarked upon at that time was the beginning of mapping the human genome. They were aware of all of the discoveries that others had made in basic research, but the acceleration of breakthroughs through the use of advanced engineering and computers to fast track this kind of research.

This chart reinforces the point that the good Senator has made. Four out of five new ideas will be rejected in fiscal year 2006. This chart states that 79 percent of grant applications to NIH will be rejected. This will be the highest percent of grant rejections in decades. In these grants lie the possibilities of life saving treatments and cures. When we are talking about the grants, as the Senator knows, we are talking about serious grants. These are not grants submitted by someone on the street saying: Listen, give me some dough, I think I think I have an idea. These grants have been researched, examined, and tested. They are the best, in the opinion of the scientists in that particular area, and are worthy of further progress. The opportunities for meaningful progress are in these projects. Eighty percent of those grants are being rejected. Why? Because we want $95 billion to go to the wealthiest individuals in this country. This is who is going to take the cures right here—the 80 percent of scientists whose grants will be rejected. With the budget squeeze and those few hundreds of
millions of dollars saved, we will be able to provide the additional tax breaks, giveaways to the wealthiest individuals.

Finally, I want to bring up the subject on which the Senator from Iowa has been the leader! I want to talk about the dangers of avian flu and the dangers of the pandemic. I have listened to the Senator make the persuasive case for our Nation that avian flu is a danger. I have listened to him stop this Senate and say: Look, we have to take the flu very seriously. We have to have the resources to deal with this challenge we are facing.

I know this chart is difficult to read, but it is a time line going back to 1990. It lists all the warnings from June, 1992 through today. We see the warnings all the way back 1992.

Policymakers must realize and understand the potential magnitude of a pandemic.

Here’s the warning in Hong Kong, 1997.

Here it is in the GAO report:

Federal and State influenza plans do not address the challenges surrounding the purchase and distribution of vaccines and antivirals.

Here it is from the World Health Organization:

Authorities must understand the potential impact and threats of pandemic influenza.

Here it is in Vietnam. Here is the December 2003 outbreak in Korea.

The President requested it. The Senate. It is about choices this day is about choices in whether, on the one hand, we think in our national interest it is more important to give the $95 billion in tax giveaways to the wealthiest individuals in this country. It is not even a fair plan. If you were for a tax program that was going to be fair, at least you could make that case. I would think, and hold your head up. This is $95 billion, and the $32,000 to every family earning over the $1 million and $29 to every family earning under $100,000—that is not even fair, if you thought that was the Nation’s priority, paid for by the most vulnerable people in our society.

I do not want to hear a lot from the other side talking about the Christmas spirit. We have seen how the Christmas spirit has played in real terms in their votes on these issues here. It is not going to be a happy one.

In my motion to instruct on higher education, which we will address in the afternoon, the following Senators have indicated support. There are others that have contacted me about it as well. Senator HARKIN and Senator DURBIN, Senator DODD, Senator REID, Senator LIEBERMAN, Senator KERRY, Senator REED of Rhode Island, Senator CORZINE, Senator CLINTON, and I will add others as the day goes on.

I thank my colleague and friend from Iowa for his excellent presentation, for having raised these questions, and for posing the vital issue for the American people, almost at the time of Christmas Eve. He has summarized it. There is no one more knowledgeable or understanding, or anyone who has been a more forceful advocate than the Senator from Iowa. I want to thank him for his energy and persuasiveness and his presentation.

Madam President, I suggest the absence of a quorum.

Mr. HARKIN. Madam President, I don’t know if any others want to come over. That is why I asked for 90 minutes. We are not going to have any new amendments.

Looking at all the various programs that were cut, Senator KENNEDY did an outstanding job of going over how devastating some of these cuts are going to be in terms of health, education, and medical research. Going through a big bill like this, sometimes your eyes kind of glaze over some of the important aspects that people do not bring to the forefront.

But there is one other cut in this bill that people ought to know about. All the ones who are watching, the Senators who are watching, you ought to know about this cut. It is the maternal and child health block grant being cut by 3 percent. The real per-capita purchasing power is now 20 percent below what it was in 2002. What is the maternal and child health block grant? It helps low-income mothers get preventive health services and medical treatment for children who have disabilities and other special needs.

One of the best things we have ever done here to help low-income families have healthy babies and to make sure those babies get the best start in life is the Maternal and Child Health Block Grant Program, which goes out to the States, and it is down by 3 percent.

Please justify that. When you vote later today on whether to accept this appropriations bill, please justify just that one thing: how you are going to justify cutting the Maternal and Child Health Block Grant Program.
This bill had a $1.4 billion cut. We have just gone over all of the things that are cut in this bill—the Maternal and Child Health Block Grant Program, to education, to medical research—all vital in defining the kind of country we are. Can it get worse? Yes. Here is what is going to happen. Hang on.

Tomorrow or Saturday or sometime, we will be voting on a Department of Defense appropriations bill. That Department of Defense appropriations bill will have a bunch of things in it. We do not deal with the Department of Defense. By the way, it will also have in it a 1-percent across-the-board cut. We are already told it is in there—a 1-percent across-the-board cut.

All of the cuts we have talked about—Maternal and Child Health Care Block Grant Programs, title I funding, special education, geriatric training centers, and NIH—all of that is going to get an additional 1-percent cut.

The bottom line is the $1.4 billion cut in this bill is going to be a $2.8 billion cut. It will double it.

As bad as this bill is now with the $1.4 billion cut, by the time we are through here tomorrow and voting on a 1-percent across-the-board cut, it will be twice as bad—a $2.8 billion cut in this bill.

That is because this bill is about $140 billion. You take a 1-percent across-the-board cut, that is $1.4 billion. So get ready. That is what this bill is about. It is not passed in its present form because there is going to be that 1-percent across-the-board cut. It is going to double.

The Senator from Massachusetts mentioned the avian flu bill. We put money in here for the avian flu. I offered an amendment on DOD appropriations back in September. In December, the chairman of the Appropriations Committee said that is not the proper place for it, that it ought to be on the Labor-Health and Human Services bill. I agreed with him. But we didn’t know if we were going to have a bill. So it was put on the DOD bill.

Later on when we got this bill before us, we added $8 billion to get us prepared to fight perhaps the biggest flu pandemic the world has ever seen, one that could kill hundreds of thousands of our fellow citizens, one that could hospitalize up to 90 million people in this country. We put $8 billion in this bill. Guess what. Look at the bill. It is not in there. It is all gone, all taken out.

They say they are going to put some more in the Department of Defense bill. We haven’t seen it yet. But they took it out of this bill.

It is going to get worse. Today is December 15. By the way, it is also the anniversary of the adoption of the Bill of Rights to our Constitution. I hope it is not too much of a leap to ask on this anniversary of the Bill of Rights what about the rights of poor people? What about the rights of low-income people? What about the rights of our people to be protected from the pandemic flu? What about the rights of our citizens to decent health care, the rights of our citizens to a decent education, no matter where they live or the circumstances of their birth? Should the quality of your education be decided by your pocketbook, what about our rights? This bill before us speaks to rights, human rights, the basic rights of an American citizen to decent health, housing, education, a shot at the American dream. So on this December 15, the anniversary of the adoption of our Bill of Rights, throughout much of the world it is a season of giving, but here in Congress with this bill it is a season of taking away education programs, taking away job training, taking away home heating assistance, taking away rural health programs, taking away maternal and child health care.

But what it really takes away is hope. It takes away hope from people who are struggling for a better life, hope for a better shot at the American dream, hope that their children will have a little bit better than what they have had. I remember when then-Governor Bush was running for President in 2000. He had been saying at that time—I haven’t heard it lately, but he had a saying that the Government can’t give hope to people. Well, I beg to differ, Government can give hope to people. It depends on who is running the Government and what is the hope. As the Senator from Massachusetts just pointed out, we have a huge tax bill, more tax breaks for the wealthiest in our society. If you are making over $1 million a year, you have a lot of hope. You are going to get about $32,000 in your Christmas stocking. Thirty-two thousand, you are just going to get it, a nice tax giveaway for the most affluent in our society. A lot of hope has been given to them by this Government.

But if you are low income, if you live in small rural America, if you are elderly, if you are disabled, if you need the help of the Government to lift you up and to give you some hope for a better life, you don’t get hope. It is taken away from you.

So what we are saying to low-income families who are working, trying to pay their bills, trying to scrape by, trying to keep their families together, trying as a family to get by as we are saying, is Merry Christmas, hang your stocking, and Congress is going to put a lump of coal in that stocking for you. That is what you get. I don’t understand how anyone can vote for this bill, especially at this time of the year. I hope our conscience would come to the fore. We all know the wonderful story from Dr. Seuss. We recall reading it to our kids, “The Grinch Who Stole Christmas.” This bill is a bill only the Grinch could love. No one would love it, no increase in NIH funding in 35 years, cuts education funding as No Child Left Behind requirements are going up, no increase in college aid, cuts job training. I could have added a lot more—as I said, cuts in maternal and child health care, cuts in geriatric training, cuts in Head Start.

Well, if you like the Grinch, I suggest you might want to vote for this bill. But we need to reject it and insist that the leadership provide enough funding to write an acceptable bill. They have the power to do it. We did it in the Senate, I repeat, under the leadership of Senator Spector, on a bipartisan basis, we passed a bill here 97 to 3. We can do it. If only the President of the United States just said to the House leadership, We want the Senate bill, we want what the Senate did to be fair and just for all our citizens. We should do this. We would have it. That House of Representatives, they will do whatever the President tells them to do. And if he had waded in there and said, Look, we don’t accept this, we will have the Senate and the House pass a $2.8 billion cut in this bill. We would have it. We would all vote for it and hold our heads up high and say we did the right thing for the citizens of our country. Yes, leadership has the power to do it. They have the White House, the House, the House. We have to vote for this bill.

What is stopping them from giving us a decent bill? As I said, we did it here. We did it on a bipartisan basis in the Senate. But if we pass this bill now, this conference report, and give this very cruel rush—we will have to get out of here. We have to go home for Christmas. We have to pass the bill. No, we don’t. No, we don’t. What we need to do is to say no, go back to the drawing board, get us a bill that is acceptable, and if we have to go on a continuing resolution for a month until we come back, or 2 months, until February, we have done that before. We would be better off going on a real continuing resolution, work with our friends in the Senate. We would be better off than accepting this bill and putting the pressure on the White House and the House to come back with a better bill. The PRESIDING OFFICER. The Senator’s time has expired.

Mr. HARKIN. That is really the essence of it, Madam President. We need a better bill. We should not vote for this one.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I share the concerns and frustrations expressed by the distinguished ranking member of this subcommittee, Senator HARKIN, and I believe he will agree with me that this bill, the bill that the Senate passed was structured as well as we could have structured it, given the allocation which we had.

Mr. HARKIN. I just said so, yes.

Mr. SPECTER. My question to the Senator from Iowa would be, on this conference report, where I have already said publicly in the conference that I thought it was grossly inadequate, $5 billion under last year on health, which is our No. 1 capital asset in this country, and education, which is a major
capital asset—health so we can function, education to prepare us for the future, and job training in the Department of Labor, I would ask him if—and I have said publicly that I intend to vote against this bill as a protest unless restrictions are needed. And I know that is unusual for the chairman of a subcommittee to take that position. But I believe that Senator HARKIN and the subcommittee and full Senate and I have done what we can on a bill subject to limitations that we have. I would ask the Senator from Iowa if there is anything more we could do given the restrictions as to allocation of what we were facing.

Mr. HARKIN. First, I say to my friend, and he is a dear friend of mine, we have exchanged chairmanships on this committee going back over 15 years—as I said earlier in the Chamber, and I say again, the bill that our chairman, Senator SPECTER, put together and that we brought out on the Senate floor and passed it. Our staff worked on it. We got a 97-to-3 vote. I say to my friend, the bill that the Chairman brought to the floor was 97 to 3. It was a good bill. We always want to do more, but given the restrictions, that is the bill. That is the bill we ought to have before us now. The problem is that the House wouldn't go along with it. But that doesn't mean that we have to go along with it.

I appreciate the position the chairman has taken in that position, too, in the past. I appreciate the difficult position he is in. But I want the record to be clear that this chairman brought out a good bill, a bill that was passed 97 to 3 by the Senate. I point out that this chairman fought very hard for our priorities and for health funding. I don't want anyone to mistake what I am saying. But I am just saying that the House and I have to say the White House, maybe through inaction or not being involved, let it happen and are not working with us. This conference report is that totally inadequate. That is totally inadequate. I might add to my friend from Pennsylvania that what we are facing now is the result of a bad budget. That is what it is. We have a bad budget forced on us. This is sort of the end result of that. But even with that bad budget, we came out with a decent bill. I say to my friend from Pennsylvania, I only wish the White House had been actively involved in this conference and came down and told the Senate leadership: We want nothing less than what the Senate did.

If we had that, we would have had a bill out here that would pass 97 to 3 again. It might even pass unanimously.

So I say to my friend from Pennsylvania, we can do better than this. I say to my friend, I do not enjoy voting against this bill, I do not enjoy it. I do not enjoy signing the conference report. I want it better. We have not have to accept this. We can go on a continuing resolution, a real continuing resolution, and say to the White House and the House: No, we need to do better than this.

That is why I say to my friend from Pennsylvania—I have the greatest respect and admiration for him, as he knows, and he has fought hard for us—sometimes at the end of the day you have to say no, we are not going to accept it. So that is our position and that is my position on this bill.

I say to my friend from Pennsylvania, I know things he has to work on today on different legislation and everything, but we have to send a signal to the House and the White House that this is unacceptable. I say to my friend, I thank him for his leadership and for bringing out a good bill here in the Senate, something we were proud of and voted for. I was proud to work with Senator SPECTER on that bill. I am sorry the House and, yes, I say the White House—they should have been involved in this—are now confronting us with a bill that is unacceptable.

I thank my chairman.

Mrs. MURRAY. Madam President, to keep America need to keep our families and communities strong. That is why I am very concerned about the fiscal year 2006 Labor, HHS and Education appropriations bill.

The Senate is scheduled to take up the final conference agreement on this bill, and it is bad news for the American people. This bill is filled with the wrong priorities for our country. If we pass this bill as a result, it will tear apart what is left of America's health care system and provide fewer investments in education and workforce training.

Instead of investing here at home—in our people, our children, and our communities—this bill will move us in the wrong direction and will undermine America's strength.

If we can rebuild schools and hospitals in Iraq out of emergency funding, why can't we provide the resources our own communities need here at home?

We know that rebuilding safe and stable communities in Iraq requires investments in education, training, and health care. And the same is true in communities across America.

If we want to be strong here at home, we need to invest here at home, but this falls far short of what we need.

That is really a disappointment because this bill is the most direct tool we have each year to improve the health and education of the American people.

More than any other appropriations bill, the Labor-HHS bill directly impacts almost every family and everyone. The bill that funds all of the Federal commitment on education. It provides funding for our investment in biomedical research. It funds all of the Older Americans Act programs. And it provides the funding to retrain or workers to succeed in a very competitive global economy.

This is an important bill and it should be used to invest in America, but instead—this bill cuts funding by $540 million from last year's level. When we add in the Medicare administrative funds, the total cut soars to $1.4 billion.

That means we are moving in the wrong direction—and families are going to feel the impact in health care, education and job training.

Let me start with health care.

This bill cuts total health care funding by $600 million. It cuts programs that help the uninsured get health care, efforts like community health centers, the maternal child health block grant; health professions training, rural health, and CDC disease prevention programs.

This bill also moves us in the wrong direction on disease research. We can all be proud of the National Institutes of Health. It is the leading source of biomedical research into deadly diseases like cancer, MS, Parkinson's, ALS, heart disease, and AIDS. But this bill provides the NIH with the smallest increase since 1970. It would move us backward in our fight against cancer and other terminal illnesses. How can we expect to be able to find vaccines for new global pandemics when we are cutting our investment in critical research?

This conference report will also make it harder for uninsured families to see a doctor. Specifically, this bill eliminates the Health Community Access Program, which I have fought to protect for many years now.

This is a program that helps our local communities to coordinate care for the uninsured and provide integrated health care services for vulnerable families.

I have seen the Community Access Program at work in my home State of Washington, and I know it is making a tremendous difference.

These are the very programs we should be investing in today. The HCAP program was authorized with broad bipartisan support in 2002. But this bill would eliminate this successful community-based model for helping the uninsured.

Not only is this bill bad news for health care, it also moves us in the wrong direction on education.

This bill represents the smallest increase in education in a decade. Today, schools are facing increasing requirements under No Child Left Behind. Today, family are facing rising college tuitions. Today is no time to short-change education. We know the burdens on our local community are growing.

In the coming year, school districts will face higher academic standards, and they will have to meet new requirements for highly qualified teachers. That means they need more help. But the conference report cuts funding for the No Child Left Behind Act by 3 percent.

Funding in the conference report is $13.1 billion below the authorized funding level.
This bill also marks the first time in 10 years that the Federal Government will slide backward on its commitment to students with disabilities. The Federal share of special education costs would drop from 18.6 percent in fiscal year 2004 to a flat 18 percent in fiscal year 2006.

Every time we cut back our investment in special education, we are putting a higher burden on local school districts, children, and their families.

In addition, funding for disadvantaged students—through title I—will receive its smallest increase in 8 years. In fact, the funding level in this bill is $9.9 billion less than what Congress and President Bush committed to provide. The bill would leave behind 3.1 million students who could be fully served by title I if the program were funded at the committed level.

Many students are feeling the impact of higher tuition. This year, tuition and fees grew by 7.1 percent at 4-year public universities. But the conference report fails to increase the maximum Pell grant award for the fourth year in a row.

It also fails to increase funding supplemental educational opportunity grants, the Work-Study Programs, and the LEAP Program, which supports State need-based aid.

In addition, the conference report also fails to increase funding for GEAR UP and the TRIO Programs, which help disadvantaged students complete high school ready to enter and succeed in college.

This bill also moves us in the wrong direction on helping America’s workers.

We hear a great deal about economic recovery and building a strong economy. Yet this conference report will cut away $31 billion. It will cut youth training by $36 million. These programs serve over 420,000 people nationwide. How can we hope to strengthen our economy and help those who lost manufacturing jobs if we are reducing our investment in job training?

All of the tools we need to build a strong economy—and a strong America—are on the chopping block in the Conference Reports.

Worst of all, this is not the end. We know that there will likely be an across-the-board cut in all discretionary programs, including those funded in the Labor, HHS and Education appropriations bill.

The business even more families will lose access to affordable health care, more children and schools will go without the resources they need to meet the Federal mandates of the No Child Left Behind Act, and more workers will see their American dream slip away when their plant closes.

This is not the right message to send to our families and communities.

Let’s show them that we want to make America strong again and that we are willing to invest here at home.

I urge my colleagues to reject this conference report and force the Republican leadership to invest in making America stronger.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, there is time available on the bill, the Labor, Health and Human Services, and Education bill, for those who wish to speak in favor of it. If any of my colleagues wish to do so, I invite them to come to the floor at this time. If there are no speakers in favor of the bill on our time, I intend to utilize this time for a discussion of the PATRIOT Act, which has a very limited amount of time to debate and discuss these issues.

But I renew my statement. If anybody wants to speak in favor of the bill, they should come to the floor at this time and we will find time for them to speak.

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005—CONFERENCE REPORT

The PRESIDING OFFICER. The order on the floor at this time is to go to the conference report to the PATRIOT Act. So under the previous order, we now have a full consideration of the conference report to accompany H.R. 3199, which the clerk will report.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, pursuant to the parliamentary inquiry: I understood Senator HARKIN had an hour and a half on Labor-HHS and that I would have half an hour on Labor-HHS, and we would then go to the conference report on the PATRIOT Act.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania is preserved, but it is contemplated that time will be used later in the day.

Mr. SPECTER. Reserved, but later?

The PRESIDING OFFICER. Correct.

Mr. SPECTER. May I inquire when later, Madam President?

The PRESIDING OFFICER. At a time to be determined by leadership.

Mr. SPECTER. Will it be in advance of the 3:30 vote on the Labor-HHS bill?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, while this discussion is going on, if I could also make a parliamentary inquiry.

Once we begin on the PATRIOT Act, is it true that a distinguished senior Senator from Pennsylvania is in control of an hour and the Senator from Vermont is in control of an hour?

The PRESIDING OFFICER. The Senator is correct. There will be 2 hours equally divided between the two leaders or their designees.

Mr. LEAHY. Thank you. I appreciate that, Madam President.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, parliamentary inquiry: We are now proceeding for 2 hours on the PATRIOT Act, as the distinguished senior Senator from Vermont has said, with 1 hour under his control and 1 hour under my control?

The PRESIDING OFFICER. That is correct.

The clerk will now report. The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3199, an act to extend and modify authorities needed to combat terrorism, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours equally divided between the two leaders or their designees.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I encourage anyone who has issues of concern to come to the floor at this time so we may consider them. This is a very complicated Act. We have had some debate already. On Monday, I spoke at some length to describe the USA PATRIOT and TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005—CONFERENCE REPORT.
to legality. That would enable the petitioner to challenge legality on disclosure or for any other reason. So the opportunity to stop a gag order is preserved under the conference report.

A second contention which has been raised is that the conference report, on section 215, should not have gone beyond the three criteria for establishing a foreign power. In a closed-door briefing, the Government presented persuasive reasons to have latitude for the court to order the seizure of tangible things, records, where there was a terrorism investigation and there was good reason to believe these other tangible records were important for that terrorism investigation.

That was not in the bill, but that was a provision that was insisted upon and pressed for by the House, and I thought it was within the realm of reason, and we included it. But the protections were the side was the sunset provision, which is vital, so that there will be a review of all of these provisions within the 4-year period. A 4-year sunset, which is vital, so there will be a review of all of these provisions within the 4-year period.

Bear in mind that the sunsets apply to the three controversial provisions in the PATRIOT Act. It does not apply to the national security letters because the national security letters were not authorized by the PATRIOT Act. They have been in existence for decades.

Now I concede consideration under the national security letters, where some have objected to the conclusive presumption, where there is a certification as provided for in the conference report by ranking officials that nondisclosure would hinder national security or would hinder diplomatic negotiations. I have discussed this in the past, but it is worth repeating. The Senate bill that was adopted unanimously, 18 to 0, in committee, and without consent on the Senate floor, had the provision which is virtually identical to the conference report. The Senate bill provides that in reviewing a nondisclosure requirement:

The certification by the Government that disclosure may endanger national security or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the certification was made in bad faith.

That language is carried over in identical form in the conference report, with the addition that the conference report is more protective of civil liberties because the certification cannot be made by just anybody in the Government, but by a ranking official, such as the Attorney General or Deputy or head of the FBI.

Again, let me invite those who have questions on the bill to come to the Chamber so we can have a discussion. If anybody has challenged any of the provisions, I invite them to come and state their concerns. I believe it is in the interest of the consideration by the conference report that the Members can understand it and express specific objections that anyone has.

How much time remains of the hour in the morning session?

The PRESIDING OFFICER. Four minutes 25 seconds remains.

Mr. SPECTER. I yield the floor. The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I should note while the distinguished chairman, the senior Senator from Pennsylvania, has made a concession of 30 days, going from 180 to 30. We made a concession of 30 days.

Bear in mind, on the delayed notice, that is where there is a surreptitious, secret search. There has to be justification to get a search warrant to have a delayed notice, and it has to be shown to the satisfaction of the judge that if there was not that delay, the investigation would be impeded.

Bear in mind for those listening, the traditional safeguard on civil liberty is to interpose an impartial magistrate between the police, law enforcement, and the citizen, so that when you have a delayed notice provision on a showing of cause, that it would impede the investigation if that were not the case.

We have already gone over in some detail in the RECORD the tightening of the provisions on roving wiretaps, where to identify the person involved and show that individual is likely to seek to evade the wiretap as a justification.

A key provision we added on the Senate side was the sunset provision, where a 4-year sunset was a 4-year provision, and the House bill was 10 years. The House wanted to compromise at 7, and we held fast. We had assistance from the White House. The President was personally notified about this. The Vice President participated. We got that 4-year sunset, which is vital, so there will be a review of all of these provisions within the 4-year period.

I am concerned that in the process—not through the fault of the distinguished chairman—many wished to raise further issues involving our liberties, and people were excluded. That is why we are running into a somewhat contentious issue as to whether this conference report should go forward.

Earlier this week, I spoke about how the world changed on September 11, 2001, and it came to a crescendo on American soil. In the aftermath of the attacks, Congress moved to quickly pass antiterrorism legislation. The fires were still smoldering at Ground Zero when the PATRIOT Act became law on October 30, 2001, just 6 weeks after that horrible day. I know how hard we worked. I was chairman of the Judiciary Committee when we moved that legislation through.

Security and liberty are always in tension in our free society, and especially so in the wake of the attacks of 9/11. The American people today and the next generation of American citizens depend on their elected representatives to strike the right balance. Preventing the needless erosion of liberty and privacy requires the balance and vision from those whom the people have entrusted with writing the laws.

It is the 100 men and women in this body who have to protect the rights and liberties of 290 million Americans. It is the distinguished Senator from New Hampshire on the floor, Mr. SUNUNU. He made reference yesterday to one of my favorite quotes from one of our Founding Fathers, Benjamin Franklin, in which he reminded Americans that "whoever undoes that which is done for security or liberty, must pay with his blood for that liberty for secure, and I might say in the long run get neither."

I negotiated many provisions of the PATRIOT Act and am gratified to have been able to add some checks and balances that were not contained in the initial proposal. But as I said at the time, the PATRIOT Act was not the final bill that I or any of the sponsors on either side of the aisle would have written if compromise had been unnecessary.

In reviewing the PATRIOT Act this year, Congress once again tried to strike the right balance between the security and the liberty that is the birthright of every American. The public expects and deserves that we will diligently fight to achieve that balance. But regrettably, the PATRIOT Act reauthorization bill that is now before the Senate does not accomplish the goal of balance. The bipartisan committee which the distinguished Senator from Pennsylvania, under the leadership of the distinguished Senator from Pennsylvania, and then the Senate adopted unanimously—unanimously, Madam President—reached a better balance.

Even that, because it was a matter of cells that those who gave up their liberty, None of us thought it was, and we knew there were matters others insisted be added which we hoped to be improved in conference.

For instance, the Senate bill, such as the PATRIOT Act itself, was a legislative compromise achieved through good-faith, bipartisan negotiations. Chairman SPECTER and I were able to
achieve a good enough bipartisan compromise that we were able to gain the support of all the Republicans and all the Democrats serving on the Judiciary Committee, including Senators who sponsored the SAFE Act. As a result of that bipartisan compromise and bipartisanship, it passed unanimously in the Senate last July.

Then the Senate leadership very responsibly moved promptly to appoint conferees. But, unfortunately, the other body did not act as swiftly, and we lost several months that could have been used to seek common ground between the two versions of the bill. The House delayed appointing conferees for several months. They pushed us up against the December 31 deadline from the sunsets in the PATRIOT Act.

In fact, it was only last month that the House finally acted to name conferees, and then the conference met only once and that was for opening statements. There was never a working meeting of the conference in which the provisions were debated and the conferees were able to offer improvements and vote on them. There was no opportunity to debate this conference report at a public meeting of conferees, and no opportunities to propose amendments for consideration by the House-Senate conference and votes.

Instead—and this is most regrettable—there came a point where Democratic conferees were shut out of the process. Key negotiations took place only among Republican conferees and the administration, especially the Department of Justice. The earlier informal bipartisan discussions of which I had been involved had been promising. Republicans and Democrats were working to come together, and a good deal of progress was being made.

Much of what is good about the conference report that is before us is owed to those discussions, I can’t help but think if we had had another one on the floor today had we not been locked out of those discussions I thank Chairman SENSENBRENNER for acknowledging this week that we came to those discussions with good ideas for accountability, for sunshine, for increased oversight, for judicial review, and for better standards by which to measure the authorities being considered for the Government. Tentative agreements were also being reached on numerous extraneous provisions, particularly from the House-passed bill.

The House version of the bill was loaded with extras, many of which had no connection to fighting terrorism. These provisions were tacked onto the bill as floor amendments, with little or no debate. Some raised very serious concerns. For example, the original House bill made significant procedural changes to Federal death penalty laws, including the opportunity for Federal proceedings to be held in a new location, even effectively get a do-over whenever they fail to persuade a jury to impose a death sentence. Can you imagine what this is saying? A jury comes back and says we cannot agree to give this person the death penalty. One of the greatest things about our jurisprudence system is our jury system. They come back and the prosecutor says: we don’t like the verdict, let’s throw it out, bring it in a new jury; let’s do it over; let’s keep doing it over until we get the result the Government wants. This and other provisions were dropped or substantially modified during the early days of bipartisan meetings.

No one will be surprised to hear that after Democrats were excluded, the negotiations took a turn and resulted in a one-sided conference report. The media reported in banner headlines on November 17 that Congress had arrived at a deal on the PATRIOT Act; it is all over, we are finished. A tad premature. In fact, our first draft conference report was widely criticized by Members of Congress in both parties and across the political spectrum. Among the Republicans there was not the minimum support needed.

Since that time, I have continued to work with other Senate conferees to push for improvements. I also reached out to the White House. I was concerned that the administration had gone along with having us excluded and basically stopping the good progress we were making. But I spent time with them; I reached out to them. And I had many discussions with Chairman SPECTER. I reached back to him on occasion that we spend more time talking with each other, more telephone calls back and forth to each other than anybody else. I say that as a compliment to Senator SPECTER because, as chairman, he has worked to include Republicans and Democrats in all these matters. I especially commend the other Senate Democratic conferees—Senators KENNEDY, ROCKEFELLER, and LEVIN. They have been constructive throughout the proceedings.

Since November 17, when it was reported that this process had been concluded, our efforts led to significant improvements in the conference report. We succeeded in making this a better bill than the earlier one being insisted upon before Thanksgiving. The current bill contains 4-year sunsets, not 7 or 10-year sunsets. It no longer contains a provision that would have made it a crime to merely disclose the receipt of a national security letter. The earlier version had a provision that prohibited people from talking to a lawyer without first notifying the Government in connection with the receipt of a national security letter was modified. Imagine that, it basically said you can’t talk to a lawyer before you check in with your Government first. We produced some improvements and better balance, and for that, Americans will be better protected.

I believe that there is still more that we can do and should do before finalizing this important measure. There are more improvements that we can make and, I believe, would have made in an open, bipartisan conference.

There are more assurances we can include in the law so that the American people can have greater confidence in the law, how it will be utilized and how Congress and the courts will ensure their rights are protected.

Along with Senator SUNUNU, Senator CRAIG, Senator MURKOWSKI, Senator HAGEL and others, I cosponsored a bill to provide a short-term extension of the expiring PATRIOT Act provisions so that we can continue working on additional improvements to the law. I was disappointed to hear that some are saying that unless this conference report is passed in this form, they would stand by to allow the PATRIOT Act provisions like that regarding sharing of important information with our intelligence community to expire. Those of us working to improve the bill are not taking that position. We want the best bill we can achieve and the greatest protection of Americans’ civil liberties.

In an editorial just yesterday, USA Today chided the Bush administration and its allies in Congress for ‘resist[ing] calls for more meaningful protection against invasion of privacy and abuse of civil liberties.’ It supported the provisions Senator SUNUNU and I have advanced to extend the PATRIOT Act for 3 months to allow more time to fix what is wrong. I am encouraged that an FBI spokesman is now endorsing the improvements. I believe we can achieve over the last month and which the administration had initially opposed. I know that together we can do better.

I did not sign the conference report in its current form. I understand that on Wednesday more than 200 Members of the House, both Republicans and Democrats, voted to recommit this conference report and continue working to improve it. I have spoken to Senators on both sides of the aisle who believe that we both need to work to produce a better bill and stronger protections for the American people. I agree and will continue working to achieve that. I believe that the approach Chairman SPECTER and I took of working together in a bipartisan manner is the better approach. I think that we followed through with that approach and we would have reached a better balanced bill and the American people would have more confidence in it.

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letters were being used in connection with library records. He then classified even the number of subpoenas served upon libraries. When that number was later unclassified, is there any wonder that people remained concerned?

I would have worked with Congress to develop better standards and review and oversight. This could have been done administratively or with a legislative correction. Instead, he hoarded the information, raised suspicions, and attacked anyone who raised questions about how government power was being used.

I want to express my appreciation, in particular to Chairman SPECTER, but also to Chairman SENSENBRENNER, and to Senators from both sides of the aisle. Together they have worked with us to correct several of the problems and concerns about earlier drafts of this conference report. As I have noted, Chairman SPECTER did speak with me and we had many, many discussions about these issues throughout this process. I appreciate his efforts. I regret that we were not able to achieve more of what we had achieved—both the bipartisan process and some of the specifics of the Senate-passed bill.

Both Chairman SPECTER and Chairman SPECTER share my interest in congressional oversight, and the conference report is a better bill because of it. Throughout the early informal, bicameral discussions and earlier during the Senate’s bipartisan consideration of this matter, I advanced several “sunshine” provisions to facilitate oversight and ensure some measure of public accountability for how the government uses its powers. The conference report contains most of these proposals, including public reporting and comprehensive audits on the use of two controversial PATRIOT Act provisions—both business record subpoenas and national security letters.

In addition to sunshine provisions, I proposed that we retain the sunset mechanism that worked so well in the original PATRIOT Act. Back in the fall of 2001, Republican House Majority Leader Dick Armey and I insisted on 4-year sunsets for certain PATRIOT Act powers with great potential to affect the civil liberties of Americans. Those sunsets contributed greatly to congressional oversight. The fact that they were included is the reason we are going through this important review and renewal process now.

This year, I proposed and the Senate agreed to 4-year sunsets on three key provisions. The House initially approved 10-year sunsets on two provisions. With steadfastness and hard work on the part of Senate conferees, we were able to achieve the 4-year sunsets that were in the Senate bill. I commend, as well, Representative COYERS and the House for passing an instruction to the House conference able to pass the 10-year sunsets. Despite strong majority support in both bodies for 4-year sunsets and even after the House had voted to instruct its conferees, it took weeks to persuade Republican leaders in the House and the administration to accept this commonsense measure.

The enhanced oversight provisions and 4-year sunsets are positive features of this conference report, but there are many problems remain. Let me touch briefly on some of the flaws in this conference report that are still troubling to Senators from both sides of the aisle and to those concerned about civil liberties. It emanates from both the right and the left.

I will start with the conference report’s treatment of section 215 of the PATRIOT Act, the so-called library provision. Under Section 215, the government can obtain a secret order that compels access to sensitive records of American citizens, potentially library records, and also imposes a permanent gag order on the recipient.

Before passage of the PATRIOT Act, there were two significant limitations on the FBI’s power to seize business records. First, it could be used only for a few discrete categories of travel records, such as records held by hotels, motels, and vehicle rental facilities. Second, the legal standard for obtaining an order was that the government had to present specific and articulable facts giving reason to believe that the subject of the investigation was a foreign power or an agent of a foreign power.

The PATRIOT Act did away with these limitations. It both expanded what the FBI may obtain with a section 215 order and it lowered the standard for obtaining it. Under current law, the government need only assert that something—anything—is sought for an authorized investigation to protect against terrorism or espionage, and the judge will order its production. Under this provision, what counts as an authorized investigation is within the discretion of the executive branch.

The Senate, in its reauthorization bill, rightly reestablished a significant check on this power. Under the Senate bill, relevance to an authorized investigation is within the discretion of the executive branch.

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hard to believe the government is today getting much data through uses of these powers that would be forbidden were they written more accurately.”

Alternatively, Democratic conferees proposed a 4-year sunset on the NSL authorizations—5 years on the sunset of the PATRIOT Act. While the Senate sunset provision worked in practice, it would at least have ensured that Congress would revisit this issue in depth. We would have had an opportunity, then, to study how these judicial re- view provisions worked in practice. Again, House Republicans rejected this path to bipartisan compromise.

The conference report’s treatment of the PATRIOT Act’s so-called sneak and peek provision is another area of concern. Section 213 of the PATRIOT Act authorized the Government to carry out secret searches in ordinary criminal investigations. Armed with a section 213 search warrant, FBI agents may enter and search a home or office and not tell anyone about it until weeks or months later.

It is interesting to recall that 4 years ago, the House Judiciary Committee took one look at the administration’s original proposal for sneak and peek authority and dropped it entirely from its version of the legislation. As a former member of the Senate Judiciary Committee, I was able to make some significant improvements in the Administration’s proposal, but problems remained. In particular, Section 213 says that notice may be delayed for “a reasonable period,” a flexible standard that has been used to justify delays of a year or more. Pre-PATRIOT Act case law stated that the appropriate period of delay was no more than 7 days.

The Senate voted to replace the “reasonable period” standard with a basic 7-day rule, while permitting the Government to obtain additional 90-day extensions of the delay. The conference report sets a 30-day rule for the initial delay, move than three times what the Senate, and pre-PATRIOT Act courts, deemed appropriate. The shorter period would better protect Fourth Amendment rights without in any way impeding legitimate Government investigations. The availability of additional 90-day extensions means that a shorter initial time frame should not be a hardship on the Government.

This conference report also is loaded with extraneous provisions that have nothing to do with terrorism, or even with the PATRIOT Act authorities, or even with terrorism.

I am particularly concerned that the conference report modifies habeas corpus law, a highly controversial move that is wholly improper to consider in this context. The changes to habeas added here at the insistence of a small number of Republican conference members have nothing to do with terrorism or even more general tools of federal enforce- ment. These changes were not included in the PATRIOT Act reauthorization bill of either the House or the Senate. They were added late in the conference process, after all Democratic conference members were shut out of discussions. They received no serious consideration by ei- ther body’s Judiciary Committee, and have been strongly opposed by the U.S. Judicial Conference and others. And yet these modifications could have very significant unintended consequences—in habeas cases that are already pending in California and other States.

The conference report includes a version of the Combat Methamphetamine Epidemic Act of 2005, a bill that, like the habeas provisions, is extra- neous to the PATRIOT Act reauthoriza- tion. The version in the conference report contains troubling provisions that I wish could have been debated fully before we were forced to vote on them in this context. A portion of the bill lowers the threshold of the amount of money or drugs necessary for a de- fendant to qualify as a “kingpin” and to therefore be subject to a mandatory life sentence. This is an excessively harsh provision to people who are not truly drug kingpins. No one has sympathy for producers and dealers of methamphetamine, but the punish- ment must fit the crime, and in these cases, mandatory life is dispropor- tionate.

During early negotiations on the conference report, I sought to strike title II of the House bill, which included pro- visions that vastly expanded the Fed- eral death penalty and removed impor- tant limitations on its use. I was ac- cused. I already noted one particularly problematic provision, which allowed Federal prosecutors a “do-over” whenever they failed to persuade a jury to impose a death sentence. Another pro- vision was designed to carve out a cat- egory of homicides that would be eligi- ble for capital punishment despite the fact that the defendant did not himself kill, intend to kill, or knowingly create a grave risk of death. Yet another provision substantially narrowed the jury’s power to consider, as a reason not to impose the death penalty, the fact that other equally guilty offenders in the same case were escaping such punishment. These extraneous and ill-considered provisions were ultimately dropped from the con- ference report, for which we should all be grateful.

House Republicans did, however, in- sist on keeping other death penalty pro- visions in the conference report. The most objectionable of these will revive a small group of pending death penalty prosecutions for aircraft hijackings committed in the 1970s and 1980s. Specifically, it is de- signed to overrule the district court de- cision in United States v. Safarini, which struck the death penalty for a 1986 hijacking offense on the grounds that the Federal Death Penalty Proce- dures Act of 1994 could not be retro- actively applied to a pre-1984 crime, at least absent clear congressional intent to do so.

To my knowledge, Congress has never enacted death penalty legislation
I fear that it is going to be a very divisive and partisan vote tomorrow. The USA PATRIOT Act has been a valuable tool in our effort to combat terror, but it has also become a divisive point of contention between Democrats and Republicans and, as a result, doesn’t have the broad support that it had after 9/11. Thus, it is extremely important that every effort be made to reach an accommodation before debate becomes contentious and even more partisan.

Outside the beltway, the USA PATRIOT Act has come to be terribly misunderstood. Many believe it is related to Guantanamo Bay and the detention of prisoners. Others believe it authorizes torture or the secret arrest of Americans. It does none of these things.

At the same time, some have irresponsibly sought to characterize anyone who seeks to improve or criticize the law as somehow playing into the hands of the terrorists. They have implied that the USA PATRIOT Act will expire in its entirety on December 31, and we will be left with no defense against terrorist acts. This, too, is untrue.

What is true is that when it comes to national security, it is so important to build consensus. Our efforts to combat terror in general, and the authorities in the PATRIOT Act specifically, are diminished in effectiveness if they are not seen by most Americans as the product of bipartisan effort in Washington.

I believe our Nation’s safety requires this body to reach compromise on this bill.

That is why, when Senator SPECTER asked me to join him in introducing the Senate bill, I agreed. I want to say something. Senator SPECTER has been a wonderful chair of the Senate Judiciary Committee. He listens, he is open, he is smart, he is legally pristine, and he has been a fine leader for the committee.

I believed Senator SPECTER, working with Senator LEAHY and the members of the Judiciary Committee, would be able to build consensus, to reach compromise, and deliver legislation that the American people could be confident represented bipartisan agreement, not politics.

My confidence in Senators SPECTER and LEAHY and my colleagues on the committee was well placed. In July, the committee unanimously reported the bill favorably, and shortly thereafter the Senate, again unanimously, passed the bill.

Having a USA PATRIOT Act reauthorization bill supported by Senators CORNYN and SCHUMER, Kyl and FEINGOLD, HATCH, KENNEDY, and every single Member of this body gave me great comfort, and I believe was an important step toward healing the divisive partisanship that has come to be associated with this legislation.

Unfortunately, that spirit seems to have ended. The conference report process, instead of bringing unity, appears to have had the opposite result: dividing my colleagues by failing to adequately take into account differing views on elements of the bill. The simple result is that in the next day we are likely to divide into two camps.

In the end, of course, we will extend the PATRIOT Act’s expiring provisions in some form because despite the rhetoric, nobody doubts that the provisions will be extended. What is at issue is whether and to what extent modifications are made.

What will be lost is the much needed sense that the PATRIOT Act represents a broad consensus. That may be more important than the specific details of provisions and issues. I believe it is. The bottom line is that having a consensus bill is of paramount importance. So I rise today because I still believe——

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

Mr. LEAHY. Mr. President, I ask the unanimous consent to please try once again to achieve the compromise that we had when the Senate bill passed this body unanimously.

I believe national security deserves no less, and I believe the distinguished leadership of the Judiciary Committee, Senator SPECTER and Senator LEAHY, can achieve this if given the opportunity and if the leadership puts its clout behind bringing the House on board.

Absent that, I will vote for the Sununu legislation to provide an element of time. I also ask that the meth bill, as well as the port security bill, be added to his legislation. I thank the ranking member and the chairman and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, while the Senator from California is on the floor I want to thank him for the complimentary comments, and I want to thank her for being a very productive and constructive member to the Judiciary Committee not only this year while I have been chairman but for many years. She and I had a 30-minute conversation yesterday by phone, after working hours, talking about these issues. If there are any specific points that trouble the Senator from California, I would be glad to discuss them with her, not only to try to deal with any issue she has, but I find that is a good method for acquainting all the Senators with what is at issue in the bill.

I note there were no specific issues raised, and I am not asking that specific issues be raised. I heard what the Senator from California said, and I agree with her about the point of consensus. Senator LEAHY and I have established a superb relationship, with bipartisanship, which has made the challenged provisions governing judicial review, particularly of national security letters, I believe on these two issues, as well as some of the others, continued good-faith negotiation will result in solving the problems in a way that will be acceptable to a vast majority of this body and will not in any way diminish the ability of our law enforcement and intelligence organizations to do their job. Congress has established an honorable tradition of putting aside party politics when it comes to national security. We were able to do that in the Senate with this bill. So it is critical that this approach be carried forward to the end. Congress has the unanimous-passed Senate bill represents that compromise. And while I understand that accommodations must be made to the House, these cannot be so great as to destroy the consensus in the Senate that we have built.

I know that Senator SPECTER and Senator LEAHY have worked long and hard. I also know that Senator LEAHY made some compromises to vote for the Senate bill that passed this body. I believe Senator SPECTER and Senator LEAHY to please try once again to achieve the compromise that we had when the Senate bill passed this body unanimously.

I believe national security deserves no less, and I believe the distinguished leadership of the Judiciary Committee, Senator SPECTER and Senator LEAHY, can achieve this if given the opportunity and if the leadership puts its clout behind bringing the House on board as well.

Absent that, I will vote for the Sununu legislation to provide an element of time. I also ask that the meth bill, as well as the port security bill, be added to his legislation. I thank the ranking member and the chairman and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

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Mrs. FEINSTEIN. I very much appreciate the conversation we had last night, where I tried to share this view. I thank the Senator for listening.

It seems to me, and Senator LEAHY will certainly correct me if I am wrong, that the crux of this problem revolves around two pieces of the bill. It seems to me there is not more than one way to solve that problem. I just think if the two of you got together, and the chairman of the Judiciary Committee of the House, that there might be consensus achievable respecting the rest of the bill certainly can go into play. I do not see any problems with those, on my part. But I think Senator LEAHY, who has participated in this—let me say another thing.

I believe there is a real problem in these conferences where people get shut out at certain points. It is counterproductive. I would urge that not happen in the future because it does. I believe it conditions, negatively, the entire remainder of the conference.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, on my time, if the Senator from California would like to make her sections she is concerned with, I would appreciate it.

Mrs. FEINSTEIN. It is the national security letters and section 215.

Mr. SPECTER. I thank the Senator from California and yield the floor.

Mrs. FEINSTEIN. I also thank the Senator from California for her involvement. Nobody wants to kill the PATRIOT Act by this action. I know our distinguished majority leader has said he would oppose the extension. We will see what happens in that vote. Many of us say we will oppose things, and they happen. I am talking about the 3-month extension. Even if the other body has left, they always leave back a couple of people who can do things by unanimous consent.

The Senator from New Hampshire is in the Chamber. How much time does he wish?

Mr. SUNUNU. May I have 4 minutes to touch on a few points?

Mr. LEAHY. I yield 4 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SUNUNU. Let me begin by addressing a concern that was just raised. It was suggested that cloture is not invoked tomorrow that there might not be a 3-month extension and the expiring provisions of the PATRIOT Act, which are now law, would effectively be killed. Why would there not be some short-term extension of the PATRIOT Act of 3 months or 6 months? It would be because some Member of Congress—I hope no one in the Chamber at the moment—but some Member of the House or Senate thinks that we will be better off without the PATRIOT Act, rather than with a 3-month extension.

I suggest, No. 1, that is absolutely irresponsible, and, No. 2, that anyone who would make that argument is suggesting that the President, Chairman SPECTER, and the ranking member, Senator LEAHY, are insincere in their suggestion that the tools provided to law enforcement under the PATRIOT Act are extremely important tools that law enforcement generally need.

Anyone who would be willing to oppose a temporary extension and prevent some elements of the PATRIOT Act to remain in force is either behaving irresponsibly or they are arguing an act may be a bad law, and that person’s part that current law actually is not as important as they had previously suggested. I believe everyone can decide for themselves what they think the likely option, the almost certain option would be if cloture is not invoked.

With regard to the substantive concerns, there are many. But let me first address the issue of the national security letter. Under the conference report, there is no meaningful judicial review of a national security letter or its accompanying gag order because the threshold that has to be met by an individual or a business served with a national security letter is a showing of bad faith on the part of the Federal Government. You will never win that argument in court. You will never be able to meet that high a threshold. Therefore, even in the most egregious case, you will never overturn the national security letter or its accompanying gag order.

The suggestion that this concern is moot because similar language was in the Senate-passed version is irrelevant because that Senate-passed version also included a real standard on Section 215 subpoenas, which required the individual to be connected to a terrorist or spy; it included a judicial review of the gag order associated with 215 orders; and it included a 72-hour notification period for delayed notice, or sneak and peak search warrants. All of this, which again, we approved in the Senate package, has been scrapped.

We saw things that many of us were not happy with that national security letter language. But in that bill we had other substantial gains for civil liberty protections, and those have been left at the doorstep by this conference report. To come back and say to us now that our concerns about national security letters do not count because they were part of some previous compromise that is no longer before us avoids the substantive concerns we have raised.

There are other problematic provisions that were put into the bill in conference that were not part of the Senate bill. Under the conference report, you have to tell the FBI if you want to challenge a national security letter or 215. That means you have to tell the FBI you have hired an attorney and you have to tell the FBI the name of the attorney.

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

Mr. SUNUNU. I ask for 1 additional minute.
Mr. LEAHY. I yield an additional minute.

Mr. SUNUNU. I am not a lawyer. I am an engineer by training. But I know of no other provision in law where that is required. Even if it is required in a few very narrow cases in law, I think this will provide the chilling effect on our right to counsel. I believe such a requirement is an unnecessary limitation on our civil liberties.

I have one final point about the arguments for administration and by some here in the Senate. The suggestion was made that changes do not need to be made because there has been no evidence of abuse of the existing law. We do not seek to insert protections for civil liberties in law because we do not trust a particular person. The Framers enacted the fourth amendment to the Constitution, not because they didn’t trust George Washington but because they wanted to protect these freedoms in perpetuity.

I yield the floor.

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

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the Senator from New Hampshire is wrong on what this law provides. When he picks up the national security letter and says it may be challenged only on the bad faith requirement, he is wrong. There may be a challenge and the national security letter may be quashed under the express terms of the conference report if it is unreasonable or oppressive. The national security letter was not created by the PATRIOT Act, but we took this occasion to put civil liberty safeguards in this bill on the national security letter by eliminating the prohibition against consulting with a lawyer. Today, if you get a national security letter, you can’t talk to a lawyer.

The conference report gives an explicit right to talk to a lawyer. There had been a provision that before you talked to a lawyer you had to tell the FBI who the lawyer was. Senator LEAHY raised an objection to that point, and he was right, and it was corrected. Yet if the FBI asks you who your lawyer is, then you have to tell them. But you don’t have to go to the FBI first and disclose who your lawyer is.

But there are significant changes in the conference report beyond the bad-faith issue that the Senator from New Hampshire talks about, and we ought to recognize that. But this conference report goes a long way to protect civil liberties by specifically saying you can go to a lawyer and get it quashed for certain reasons.

As to the bad-faith requirement, the Senator from New Hampshire skims lightly over the fact that the Senate bill is even tougher than the conference report by going on to other sections. That is obscuring the issue. Take up the bad-faith requirement. I already read it a couple of times, this morning and on Monday and on Tuesday. But the Senate language was identical.

But the conference report is more protective of civil liberties because, while the Senate bill said the Government had to certify anybody in the Government, the conference report requires a ranking official.

But the Senator from New Hampshire then skips over to the 7-day requirement on notification.

There is already a protection of civil rights by requiring the court to make a finding that the delayed notice is important to the investigation, or will hinder the investigation.

To have the Fourth Circuit saying “45 days” when you have the current law saying “reasonable,” which could be anything, as a bargaining matter, when we come with the Senate report at 7 and the House is at 180. We compromised at 30, and I think that is not unacceptable. Is it what ARLEN SPECTER would like, or what Senator SUNUNU would like?

But when the Senator from New Hampshire talks about getting an agreement where the House and Senate disagrees and you have an impasse, you don’t have a bill.

Chairman KENNEDYBRENNER went the extra mile. That is he going to further? That is a big question? If there is an impasse, there is no bill.

To repeat, if cloture is not invoked, we don’t have a bill, and I will go back to work, I will go back to the drawing board, and I will try to get a bill. But that doesn’t say that there will be a bill when the majority leader has said he is not going to take up an extension and you have to get agreement from the House.

On the section 215 provision, the conference report gives an additional way beyond the three-pronged test. But we still have judicial review which you do not have today: and that is the threshold for the determination of the impartial magistrate between the citizen, on the one hand, and the law enforcement officers on the other. There have to be many hurdles gone through to get a terrorism investigation authorized. It is only a terrorism investigation where the court can allow the latitude to get somebody’s records where it is important to the investigation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SUNUNU. Mr. President, I ask to be yielded 1½ minutes.

Mr. LEAHY. I yield 2 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SUNUNU. Mr. President, I want to be courteous to my colleagues who wish also to speak, so I will briefly address a couple of the points raised.

First, I never suggested that the ability, allowed under the conference report, to hire a lawyer to challenge an NSL, and oppose cloture. I am for that. I don’t know that is some great show of benevolence on the part of the Federal Government that now for the first time you will actually be allowed to contact a lawyer if you are served with a national security letter. So I appreciate that. But this is about much more than that simple fact.

Judicial review is important. But to have a meaningful judicial review you have to have a threshold, that the recipient of a NSL may actually be able to achieve. I suggest that the showing of oppressive or abusive behavior by the Federal Government, the showing of bad faith, is simply too high a threshold to make that judicial review process meaningful.

Finally, I come back to the suggestion that if this bill falls on cloture, we will not have a bill, and portions of the PATRIOT Act and the lone wolf provision will expire. I do not take that to mean that the Senator from Pennsylvania will not support a 3-month extension. I hope and I believe that he would in such an event. I hope and I believe that the House would support such an extension of the expiring provisions because having them remain in place on a short term basis of 3 months or 6 months, is much more important than having these provisions expire.

If those who do not agree with my opposition to cloture on the conference report really think they will have no bill, then obviously their arguments that the PATRIOT Act is a very important piece of legislation don’t have credibility.

I yield the floor.

Mr. SPECTER. Mr. President, when the Senator from New Hampshire talks about a high bar for upsetting a national security letter, he overlooks the provision that you can quash, if it is unreasonable.

If the judge finds it is unreasonable, is that too high a bar?

Mr. SUNUNU. Mr. President, I will address the question and the concern. I think the threshold is too high. But I would prefer that time be provided to others—there are a number of others on the floor—who support my position and oppose cloture.

Mr. SPECTER. On my time, I redirect the question to the Senator from New Hampshire who says the bar is too high.

Is it a high bar to quash a national security letter, if a court finds it is unreasonable?

Mr. SUNUNU. Mr. President, that is not the only basis on which these will be reviewed. The national security letter and the gag order require showing of bad faith on the part of the Government. I believe that standard as written in the conference report would prove to be too great of a threshold for individuals or businesses to have any reasonable chance of meeting. We have had 30,000 national security letters issued. To the best of my knowledge, none of them have been overturned. I think we owe the public a clear, reasonable and pragmatic standard in order for those to be overturned. I do not believe this conference report includes such a standard.
Mr. SPECTER. Mr. President, the Senator from New Hampshire is mixing apples and oranges. When he talks about bad faith, he is talking about disclosure. When he talks about a motion to quash a national security letter for its basis alone, he may be quashing on that ground alone.

I am not going to ask the question again. I asked it twice. On neither occasion was there an answer that it was too high a bar to quash a national security letter because it is unreasonable. This is a fair standard.

When the Senator from New Hampshire—if I could have his attention before he leaves—talks about 30,000 national security letters, I already said on the floor that is the Washington Post. That is not accurate. I have invited my colleagues, and I will not ask the Senator from New Hampshire if he has sought a classified briefing. But I can't tell you what the answer to that is. Although I have asked the Department of Justice to release information to show the Washington Post statement of 30,000 is out of line and not accurate, I ask my colleagues not to vote on this bill based on what they read in the Washington Post.

When you have a contested issue—and I put this before the Senate on Monday—go to the Department of Justice, they will give you a classified briefing and tell you what the facts are. Don't vote on this bill by what you read in the Washington Post.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, one concern I have is that the Senator from New Hampshire is correct, you have an extraordinarily high bar in trying to overturn a gag order. It is extraordinarily high and raises in my mind some significant first amendment questions.

As to the 30,000, it is difficult to get an answer to this because the Justice Department has been remarkably tightlipped. They have not answered questions. Many times in the normal course of oversight they would not answer the questions. I don't know how many of my letters that have gone down there have been unanswered on these issues. It is extremely difficult to get a complete and complete answer from this Department of Justice. That is one of the reasons we are so concerned.

I might say, the idea that we have to have a classified briefing which can't be questioned and then release information to the hands of the Department of Justice is one of the things that concerns Americans in the PATRIOT Act.

I yield 1 minute to the distinguished Senator from Wisconsin and 4 minutes to the distinguished Senator from Oregon.

Mr. FEINGOLD. Mr. President, the point the chairman was discussing with the Senator from New Hampshire, it is the Senator from Pennsylvania who is mixing apples and oranges on the NSL requests.

Let me point out these proceedings where you are supposed to challenge an NSL they are in secret. The person challenging the NSL cannot see what the Government is arguing. So it is all well and good to say there is review of the NSL, but the challenge is not done in a fair proceeding. It is the chairman mixing apples and oranges.

This is the second time the chairman has urged me to get a classified briefing. I did and it did not change my view of the underlying points being made, whether the Washington Post was completely accurate or not. I had that briefing and I tell you I didn't have the same reaction the Senator had.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. On my time, what apples and oranges am I mixing? I ask Senator FEINGOLD?

Mr. FEINGOLD. By not acknowledging the difference of the kinds of proceedings that take place with regard to an NSL and normal criminal proceedings. Those are different kinds of proceedings.

Mr. SPECTER. Of course they are different.

Mr. FEINGOLD. That makes a difference on how one regards the ability to challenge.

And the secrecy, the person challenging the NSL cannot even see what the Government has. That is very different than a normal criminal proceeding.

Mr. SPECTER. Mr. President, I think the Senator from Wisconsin does not know the difference between an apple and an orange. This is not a criminal proceeding. If you have a criminal proceeding and a search warrant, you go into a court with a motion to quash and you put on witnesses, you get an accurate and complete answer. It is extremely difficult to get a complete answer in a proceeding.

I was a district attorney for 8 years and there are occasions where they are in camera. If there are national security issues involved, they are consistently in camera on a variety of procedures.

To say that I am mixing apples and oranges when you compare this to a criminal proceeding simply indicates that the Senator from Wisconsin does not know the definition of an apple.

I yield the floor.

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

Mr. WYDEN. I have enormous respect for Chairman SPECTER and Senator LEAHY, and will say what is so troubling about this particular period: Virtually every single day, almost every day, we see another report about the administration trying to skew the bounds between fighting terrorism ferociously and protecting the civil liberties of the people of our country.

The front page of the paper today: Secret Pentagon databases are kept. Essentially, the administration, when somebody digs it up, finds out that all of this is being done—again in secret.

As I have said many times, the two concepts—security and civil liberties—are not mutually exclusive, and when crafting legislation, they be approached in tandem. In fact, it is my view that the promotion of American security and the protection of American civil liberties should be mutually reinforcing principles. If one goal is abandoned for the other, or one goal carries less importance than the other, then a new solution must be found.

A new solution is certainly needed in this case. The PATRIOT Act conference report reflects the wholesale rejection of this two-pronged approach and relegates civil liberties to second class status.

The conference report strips out those Senate provisions that helped ensure good Congressional oversight. It limits the ability of law-abiding Americans to defend themselves from post-PATRIOT Act searches. These changes do not make the PATRIOT Act a more effective tool for fighting terrorism; ultimately, they leave Americans more vulnerable to violations of privacy and the PATRIOT Act more susceptible to abuse and civil liberties.

I am not going to go through the whole bill, but would like to highlight one issue in particular that Oregonians have raised with me—National Security Letters. National Security Letters authorize the FBI, without judicial approval, to obtain Americans' sensitive information.

Senator SPECTER has enormous technical legal skills, and I am very concerned about the national security letters, as well. I sit on the Intelligence Committee. Of course we cannot get into any aspect of what goes on in those debates, but it seems to me any way you parse the legal language with those provisions and the national security letters, it is not balanced. It is, once again, skewed against the rights of the individual.

The Washington Post recently reported that the FBI is using National Security Letters to go on fishing expeditions, and the FBI issued at least 30,000 NSLs in the last year alone. In these fishing expeditions, the FBI reportedly casts a wide net, gathering sensitive personal information on innocent Americans.

The Post article describes the experience of George Christian of Connecticut. Mr. Christian manages digital libraries and reportedly received an NSL seeking 'all subscriber information, billing information and access logs of any person' who used a specific computer at a certain library branch. The FBI reportedly instructed Mr. Christian that he could never talk to anyone about the request. In spite of this apparent gag order, he decided to challenge the NSL. The court files are
sealed, but the Post reported that the judge described the basis for the NSL as laughably vague.

With the FBI issuing at least 30,000 NSLs a year, how many other Americans like Mr. Christian are out there? How many Americans have had personal information turned over to the federal government—who they’ve called, where they’ve traveled, what they’ve bought—because someone didn’t have the time or the money to fight an unreasonable NSL? Who is going to go to all the information the FBI has reportedly gathered that may now be in vast government databases? If any one NSL can be used to gather information on thousands or even tens of thousands of Americans, one can only guess how many Americans have already been affected by these fishing expeditions.

As pointed out in the Post article, the FBI acknowledged from the beginning that the NSL was an incredible power that had to be used judiciously. As one FBI employee stated in a 2001 memo sent to all 56 field offices:

NSLs are powerful investigative tools, in that they can compel the production of substantial amounts of relevant information ... But NSLs must be used judiciously.

Thirty thousand NSLs a year doesn’t sound judicious to me. And 30,000 NSLs a year shouldn’t sound judicious to the citizens of Oregon.

The reporting on NSLs cries out for proper congressional oversight to ensure that abuse of NSL powers does not occur. For starters, Americans must be armed with the necessary tools to challenge unreasonable National Security Letters. But the conference report further inhibits the ability of Americans to challenge NSLs.

More specifically, the conference report requires an NSL recipient who consults with an attorney to give the name of the attorney to the FBI. Talk about want to do with only the right to counsel! I am not aware of a provision like this existing in any other area of law.

For instance, the conference report imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order. So even if the NSL recipient believes that the letter is unconstitutional and that his rights have been violated, he could go to jail for 5 years.

In fact, provisions in the conference report limit the ability of Americans to challenge constitutional rights and make it more difficult for ordinary Americans and Congress to challenge abuses of that power, that give me serious pause. And there are not just one or two of them. Look in the sections concerning requests for business and library records, roving wiretaps, sneak and peak searches, and of course NSLs: there is a recurring pattern here and it is very disturbing.

There are those who claim that there have been no abuses of the PATRIOT Act. With all due respect, that is, at best, disingenuous. At least two courts have held that the FBI used its NSL power in an unconstitutional manner.

And remember, we are talking about powers that include gag rules—so how many others are out there challenging PATRIOT Act activities in silence? The ACLU, for one, would well say, "I haven’t done anything wrong and I have no problem with the government doing what needs to be done to fight terror—if they end up with my personal information, but don’t use it against me, so be it."

I wonder how that innocent person would feel if the FBI were watching over his shoulder as he surfed the Internet, standing by his side and noting whom he calls and when, or standing next to him at the cash register as he pays for an anniversary gift for his wife. Because I’ll bet he wouldn’t be ok with this. And while technology has made surveillance less obvious, this is exactly what some of the more controversial PATRIOT Act powers allow the government to do. That burden should be squarely on the government’s shoulders. The 9-11 Commission endorsed this notion, recommending that “the burden of proof for retaining a particular governmental power should be on the government.”

With respect to the overall bill, in our part of the world we are terribly concerned about what is going on with methamphetamine. Senator SMITH and I have worked very closely on a bipartisan basis with our colleagues to get a good anti-meth program. The administration comes along at the 11th hour and politicizes this meth issue at a time when we could pass it with a 100-0 vote.

As a cosponsor of the Combat Meth Act, I intend to continue to fight for the passage of the bill but not as a part of this badly flawed legislation. And while my decision was made more difficult by the fact that legislation addressing the meth crisis was included in the conference report, I will be opposing the conference report and opposing cloture.

I want it understood I am anxious to work with my colleagues on a bipartisan basis, putting aside particular climate and the need to constantly keep the teeter-totter balance—fighting terrorism aggressively, protecting the civil liberties of our country—it seems to me we have to be very judicious with respect to how tools such as the national security letter are being used. Any way you cut it, my colleagues, I don’t see that taking place.

So more time is needed to make the necessary corrections to the conference report to ensure that the PATRIOT Act does not infringe upon Americans’ civil liberties, protects their security and protects their rights and freedoms. The Senate should not be coerced into accepting a piece of legislation that allows the Federal Government to reach, unchecked, further into the personal life of every American, with fewer means of appeal and less oversight.

I therefore urge my colleagues to support the proposal submitted by Senator LEAHY and Senator SUNDU in extending the expiring provisions of the PATRIOT Act for 3 months. I ask unanimous consent that my statement be printed in the RECORD.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, without getting into methamphetamine, which we have accommodated the interests of the Senator from Oregon and other Senators by putting them on this bill because it is a measure which ought to proceed, let me ask the Senator from Oregon, when he complains about the national security letters, I ask whether the conference report is not a big step over existing law? National security letters have been in existence for decades.

Mr. WYDEN. National security letters.

Mr. SPECTER. Mr. President, I have the floor. I have not propounded the question yet.

National security letters have been in existence for decades. While we take up the PATRIOT Act, we have used this occasion to add protections so that whereas today they are secret, we have explicitly provided the right to consult with a lawyer. I don’t have to do that without providing it explicitly. Somebody ought to be able to go to a lawyer, but if they get a national security letter today, they are betwixt and between.

Originally, this legislation had a requirement you had to tell the FBI who the lawyer was. The FBI wanted that provision because there are some lawyers who have been alleged to be involved in collusion with the terrorist organizations. As I said earlier, Senator LEAHY objected to that and I agreed that you ought to be able to hire your own lawyer. If the FBI asks, okay, it is a fair request and you can tell them.

Then we provided you can quash those national security letters if they are unreasonable. If you go to a judge and you say, this is unreasonable, now the standard of reasonableness is all under the law, what any reasonable man would do. Is that too high of a bar? There is judicial review.

You come to the point of disclosure where you have the issue as to whether disclosure will impede the investigation. The contrast is through the law, there are limitations on disclosure where there is a legitimate law enforcement concern about not impeding an investigation. The determination as to whether you have a national security issue or are impeding diplomatic relations is a matter of judgment. We passed a Senate bill with a provision that on national security letters—until now there has been no challenge possible at all.
We put statutory challenges in our Senate bill, and renewing a nondisclosure requirement, the certification by the Government—anybody in the Government, no delineation as to who—“that disclosure may endanger the national security of the U.S. or interest with diplomatic relations shall be treated as conclusive unless the court finds the certification was made in bad faith.” That is a pretty tough standard. But that was the Senate bill. Then in the conference report, we kept it. The Senator from Oregon was one of 100 Senators who did not object to the PATRIOT Act being passed by unanimous consent. But in the conference report we said let’s do a little more here. Before you have a certification, let’s make sure it is somebody who has a lot of responsibility—the attorney general, Director of the FBI, deputy attorney general, et cetera.

My question to the Senator from Oregon is this: Aren’t those at least somewhat meritorious in protecting civil liberties? Should we have gotten into conference—in a tough conference where Chairman SENSENBIHNER, head of the House Judiciary Committee, went the extra mile—should this bill go down to be filibustered because of that provision?

Mr. WYDEN. As my friend knows, I think virtually everything the Senator from Pennsylvania does is meritorious. I am troubled, though, about where we are with the national security letters. Yes, they existed for years, but they were greatly expanded with the PATRIOT Act. We know that. I am also concerned as we consider this kind of legal language that there will be a chilling effect on the exercise of the right to counsel, and I get that again because of my examination of the legal language that there will be a TRIOT Act. We know that. I am also concerned about the attorney general, the director of the FBI, deputy attorney general, and the attorney general, et cetera.

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Today, December 15, 2005, marks the 214th anniversary of the ratification of the Bill of Rights in 1791. Among the freedoms enshrined in the Constitution is the fourth amendment’s guarantee that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. Let me state that again because that is what is at stake in this debate. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

It is ironic that we are now considering passing legislation that would greatly undermine that principle. Instead, we should take this occasion to reflect on the importance of the liberties guaranteed to all of us by that document and to understand that we can give law enforcement officers the tools they need to fight terrorists without sacrificing our constitutional rights.

I have worked very hard with my colleagues to achieve that goal. Earlier this year, I joined with five colleagues from both sides of the aisle in introducing the SAFE Act. I am proud of the leadership and courage shown by Senators Craig, Durbin, Sununu, Feingold, and Murkowski. That legislation, the SAFE Act, would have extended all of the expiring sections of the PATRIOT Act. It would also have placed reasonable limitations on the way those powers are used to protect America’s fundamental freedoms.

As the Senate began its work on the process of reauthorizing the PATRIOT Act, I continued to work closely with the SAFE Act sponsors to incorporate our commonsense proposal into the Senate reauthorization bill. Although the legislation reported out of the Senate Judiciary and Intelligence Committees was not perfect, it took important steps to protect the freedoms of innocent Americans and passed the full Senate with unanimous support from among the Republican, Democratic, and Independent membership of this body.

That is why my colleagues and I fought so hard to see that the conference committee remained true to the Senate-passed bill. Unfortunately, when the details of the draft conference report were released in the week before Thanksgiving, it became clear that the conferees had retreated from the modest civil liberties protections included in the Senate bill.

My colleagues and I renewed our request that the civil liberties concerns be addressed. We did not ask for all of the provisions of the SAFE Act. We did not even ask for all the provisions in the Senate legislation. Although we could have easily put this issue behind us now if the House had taken up and passed the Senate bill we unanimously adopted in this Chamber, we simply asked the conferees to make modest changes to a handful of critical provisions. Yet those changes were not made.

Let me review what some of the remaining concerns are with respect to the conference report.

First, section 215. One of the most controversial provisions of the PATRIOT Act is section 215. Section 215 allows the government to go to a secret court to obtain financial, library, medical, travel, and a whole host of other kinds of records that fall under the extremely vague definition of “any tangible thing.” The conference report would also impose an automatic penalty on the holder of those records from revealing information about the request. It would not permit the recipient to challenge the gag order.

To be clear on that point, in order to obtain a search order under section 215, all the Government has to do is go to a secret court, the secret FISA court, and claim that the order is relevant to an ongoing terrorist investigation, an application that the court has no discretion to deny. The recipient of the order may challenge it in any case where “immediate notification of the warrant may have an adverse result.” The conference report before us is not much better, as it allows the Government to wait up to 30 days to notify the target of a property search.

I believe we can do better, and I believe the proposal that has been introduced on a bipartisan basis would allow us an additional 90 days to try to work through some of these issues on the PATRIOT Act. I believe, in fact, that there is some oversight with respect to the controversial provisions of the PATRIOT Act that receives a unanimous vote of the Senate.

In my own State, liberal and conservative newspapers have said that this Senate has an obligation to protect the constitutional liberties of Americans.

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

Mr. SALAZAR. Mr. President, anNSL, or a national security letter, is a warrant to hang tough. I think we have

Mr. SALAZAR. The Rocky Mountain News said last month that we in the Senate should hang tough because fundamental freedoms of America are at stake.

The Colorado Springs Gazette, a very conservative newspaper, said insisting on added protections for civil liberties and stricter sunset provisions are doing the right thing by holding their ground.

The Denver Post editorial said: We support a bipartisan effort to block final passage unless safeguards are reinstalled.

I believe the Senate can do better in helping us move forward in the fight against terror, giving law enforcement the tools they need to conduct battle, and at the same time assuring that we are protecting the cherished freedoms of our democracy enshrined in our Constitution and the Bill of Rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, with all due respect, I think we do not need any newspaper editorials to tell the Senator to hang tough or to tell Senators to hang tough. I think we have hung tough, mighty tough.
Let me take up the specifics about what the Senator from Colorado has had to say.

Mr. FEINGOLD. Mr. President, we have many speakers on our side, and I just want to be clear that this time is charged to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator is in control of the time.

Mr. SPECTER. There is no doubt about that. I sought recognition, and it is at my time. There is no doubt about that at all.

Mr. FEINGOLD. I just wanted to clarify that.

Mr. SPECTER. The interruption of the Senator from Wisconsin can be charged on his time.

As to section 215, the Senator from Colorado is wrong. The conference report provides that there may be a “challenge to the legality of the order by filing a petition with the FISA court, and that petition can take up the gag order.

When he talks about the standards, there are the three criteria from the Senate bill, but there is an additional provision that the judge, judicial review, that there is for terrorism, investigation which has been authorized by going through quite a number of hurdles, those records are important for a terrorism investigation. If the Senator is talking about library records, it has to be the Director of the FBI or the assistant Director, or the number-three man. They cannot be delegated. So there are really safeguards and protections for civil liberties in this bill. We hung tough and we got them.

When the Senator from Colorado talks about the conference report on delayed notice, so-called sneak and peak, not much better, I will let my colleagues evaluate whether the Senator from Colorado is right or the Senator from Pennsylvania is right. Currently, under the PATRIOT Act, the only limitation is a reasonable period of time, which can be anything. The Senate bill came in at 7 days. The House bill came in at 180 days. The Fourth Circuit has said that 45 days is a reasonable period of time.

I yield the floor.

Mr. SPECTER. Thirty seconds.

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The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, a point of inquiry: May I respond to the Senator from Pennsylvania on his time for 30 seconds?

Mr. SPECTER. No, the Senator may not respond on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania does not yield. Mr. SPECTER. Thirty seconds?

The PRESIDING OFFICER. Thirty seconds.

Mr. SPECTER. Go ahead, on my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, first and foremost, I want to say that I have the utmost respect for the Senator from Pennsylvania as a leader and mentor of all of us. Second, I disagree with his conclusions with respect to the protections for civil liberties because when there is a secret court and the leadership of the FBI essentially in charge of giving those protections to those involved in the PATRIOT Act, it is not going to the point where we need to go to protect our civil liberties.

I yield the floor and I thank my good friend and colleague from Pennsylvania.

Mr. SPECTER. One more point before I yield to the Senator from Arizona. It is a secret court because they are dealing with national security matters. National security matters are always classified. We are briefed in Senate 407 all the time. We go to a secret room where there are classified materials. There is nothing unusual about that.

I yield 10 minutes to the Senator from Arizona.

Mr. KYL. Mr. President, I do want to agree with one thing my colleague from Colorado said just a moment ago. He said the fundamental freedoms of Americans are at stake. I agree with that. But they are not threatened by the U.S. Government. They are threatened by foreign terrorists who struck on September 11 and who have continued to threaten us since that time.

There was much criticism of our Government as a result of our failure to prevent that attack on September 11, particularly when the 9/11 Commission stepped on in this country, that they somehow somebody was afraid to those who are so afraid that people need to have some freedom and that is what we are all about here now.

As a result of significant debate in this body and in the other body, we each passed different versions of a reauthorization of the PATRIOT Act, and since then accommodated those differences in what is called a conference committee. We are now considering that compromise between the House and Senate versions in a compromised conference committee report. Those of us who helped to write the original PATRIOT Act and were very anxious to get these authorities in place believe that in some respects we have gone too far. We have leaned over too far backward to those who are so afraid that somehow somebody’s freedom might be stepped on in this country that they have not enabled us to fight the terrorists that are the real enemy. They have not given us the tools we need. But in order to get the conference committee resolved and get the bill on the floor in time, we agreed to sign the report and have this debate.

Now we find there are people on the other side who insist on having it all
their way. Every single thing they want has to occur or else they are going to filibuster the bill. What does that mean? It means they are going to talk it to death, refuse to allow us to have a final vote on it, with the result that the PATRIOT Act is gone on December 31.

They say: We will agree to extend it for a little while. That is no answer. We have a process. We have gone through the process. It has been very difficult and long. It has been hard. We have gotten a product that is the result of compromise. That is the way we work in the Senate and in the House and in this country, and that compromise has to be voted on, yes or no. If you don’t like it, then vote no.

Here is what I suggest. We are at war. We have to be responsible and serious about what we do. I will say it right now, if the filibuster results in this act ceasing to exist, if there is no more PATRIOT Act, it will be a very difficult time that occurs in this country and it could have been prevented by the provisions of the PATRIOT Act, then everyone who votes to support a filibuster will have to answer for that attack.

These things we could have done in the past. I would like to refer to what they are because, from the 9/11 Commission, we know that some of the things we put in the PATRIOT Act might prevent an attack in the future, some of the very things that are being criticized by those who are suggesting they might filibuster. Let me give just a little bit of the detail.

We now know that one of the things that stood in the way of a successful investigation was the previous law, gaps in our terrorism law that prevented the FBI from doing certain things—in particular, to exploit leads that related to al-Qaeda.

We can certainly bring substantially disrupting or even stopping this terrorist plot. The investigation to which I refer involved a person by the name of Khalid Al Mihdhar. He was one of the eventual suicide hijackers of American Airlines Flight 77, which crashed into the Pentagon, killing 58 passengers and crew and 125 people on the ground. An account of the pre-September 11 investigation of Mihdhar is provided in the 9/11 Commission’s staff statement No. 10. Here is what that statement states:

During the summer of 2001 a CIA agent asked an FBI official * * * to review all of the materials from an AI Qaeda meeting in Kuala Lumpur in one month. * * * The FBI official began her work on July 24, 2001. That day she found the cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar’s visa application—what was later discovered to be his first application—listed New York as his destination. There were some things we could have done in the past.

You would think we would have learned the lesson of 9/11. If the filibuster succeeds, those who vote for the filibuster will have passed over the wall.

Whatever has happened to this, someday someone will die and, wall or not, the public will wonder why we were not more effective in throwing every resource we had at certain problems.”

Unfortunately, this grim prediction turned out to be true; almost 3,000 people died.

We then acted to make sure it would never happen again. Now there are people threatening to filibuster the PATRIOT Act, which will go out of existence unless the filibuster succeeds, and people will wonder how it is that this wall was resurrected after the experience we had.

Here is what the 9/11 Commission said about how the wall between the criminal and intelligence investigations with respect to the investigation of Khalid al-Mihdhar:

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except to follow him onto the planes. We believe this is incorrect. Both Hazmi and Mihdhar have been held for immigration violations or as material witnesses. In the Moussaoui case, investigation or interrogation of these individuals, and their travel and financial activities, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

As we know, Mr. President, the PATRIOT Act dismantled this legal wall between intelligence and criminal investigations. It was enacted too late to prevent 9/11, but it will prevent future acts of terrorism unless we allow it to expire.

I would like to talk about another key investigation prior to September 11. I will probably have to get just about 5 more minutes of time. Before I do, let me make just this one point about those who say we do not have to let it expire, we could just extend it for another 3 months or so.

Why do they say that? Because they think they can get some more concessions. The House of Representatives is done making concessions, and I agree with them. I would say the concessions already made could go too far, could hamper our law enforcement capability of catching terrorists or infiltrating their organizations or finding evidence to implicate them in crimes. Nonetheless, at this time there is no more conference committee to go back to. We have reached all of the compromises, and not everybody can get everything they want. I certainly have not gotten everything I want. But I understand that at a certain point, the people of the United States have to pull together and act in a unified way to ensure that we have a law in place that will help us fight this war on terrorism.

I think it is extraordinarily selfish to say that we have to have our way or no way, let the Act expire. Oh, we will maybe let it go for another 3 months. What kind of uncertainty does that create? Three months, using one set of procedures and not knowing what the law is going to be.

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

Mr. KYL. I ask the Senator from Pennsylvania how much more time he can yield me?

Mr. SPECTER. We have only 10 minutes left. Senator CORNYN wants to speak. I need to engage Senator CRAIG in a dialog.

Mr. KYL. I will not ask for any more time, then, except to say at a later time I will tell the story of Zacarias Moussaoui and how the PATRIOT Act helps to resolve the situation we couldn’t resolve with Moussaoui, either, and had we done that, he may not have been involved in the 9/11 activities.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Vermont has 8 minutes 22 seconds. The Senator from Pennsylvania has 9½ minutes.

Mr. LEAHY. I yield my remaining time to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Vermont for yielding. I am glad I
I am very confident, if the Senate revision of the PATRIOT Act and the reauthorization provision we provided, which passed the Senate unanimously, had been on the floor of the House yesterday and that had been the document being voted on, they would not have seen 224; it would have been 240 or 250 or possibly 300. It is very possible that they would have been able to achieve that kind of broader support. Why? For all of my colleagues who have joined the debate today, and this is the point, I believe that the issues we are talking about are so important. If we had wanted to kill the PATRIOT Act, we would not have gone as far as we have to work with the chairman and the ranking member of the Judiciary Committee to fine-tune it and to make sure those safeguards are in place.

Americans clearly understand we are at war. That does not need to be restated on the floor of this Senate. Blood has been spilled on our soil, and we know that.

We recognize the very important task at hand, and the authority we have given our security organizations and our intelligence and law enforcement organizations in this area. But it is incumbent upon me, and it is incumbent upon all of us, to make sure that we don't go or in some way make it easier for free citizens to have their rights violated, either by accident or by some misconception of who an individual may have found he or she could use the privilege granted here to somehow leverage a situation of a free citizen. And that is not what we are about.

There is so much to be said here, and my time is very limited.

I ask unanimous consent that the “Dear Colleague” letter that many of us sent out yesterday to our colleagues that breaks down part by part what we have done be printed in the RECORD.

The material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,


DEAR COLLEAGUE: Prior to the Thanksgiving recess, several Senators expressed strong opposition to the draft Patriot Act reauthorization conference report that was circulated the other day. We were gratified that Congress did not attempt to rush through a flawed conference report at that time, and we hope the conferences would take those improvements to the conference report before we returned to session this month.

We write to express our grave disappointment that Congress has made so few changes to the conference report since then. And now, in the last week of the session, the Senate is being asked to reauthorize the Patriot Act without adequate opportunity for debate. If the conference report comes to the Senate in the same form that it was filed in the House last week, we will oppose those cloture motions and conference report. We urge you to do the same.

As you know, the Senate version of the bill, passed by unanimous consent in July, was substantially different from its House predecessor. Intense negotiations by Senators from all sides of the partisan and ideological divides.

That bill did not contain many Patriot Act reforms that we support, but it took important steps to protect the freedoms of innocent Americans while also ensuring that the government has the ability to investigate potential terrorists and terrorist activity. Although the conference report contains some positive provisions, it unfortunately retreats too far from the bipartisan consensus reached in the Senate. It fails to make some vitally important reforms and in some areas actually makes the laws worse.

Last week, Chairman Specter circulated a Dear Colleague suggesting the conference report addressed two important issues: the Patriot Act and the three-part standard. Some colleagues argue that the language in the conference report would permit the government to use the “relevance” standard only in limited, extraordinary circumstances, and that the Senate bill’s three-part standard would continue to apply in most circumstances. To the contrary, the conference report never requires the government to demonstrate that the records they seek are relevant to an authorized intelligence investigation. As business groups like the U.S. Chamber of Commerce have argued, this would allow government fishing expeditions targeting innocent Americans. We believe the government should be required to convince a judge that the records they are seeking are relevant to an authorized intelligence investigation or, for a foreign power or be a recognized terrorist or spy, as the three-part standard in the Senate bill would mandate.

Some colleagues argue that the language in the conference report would permit the government to use the “relevance” standard only in limited, extraordinary circumstances, and that the Senate bill’s three-part standard would continue to apply in most circumstances. To the contrary, the conference report never requires the government to demonstrate that the individual whose records are sought is a terrorist or spy; rather, it permits the “relevance” standard to be used in every case. It also was alleged that the three-part standard should not be required to abide by the three-part Senate standard because the Department of Justice demonstrated in a classified setting that “circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist but may nevertheless be crucial to an authorized terrorism investigation.” We are convinced, however, that the three-part standard provides the necessary flexibility in such circumstances. Indeed, the government has not been able to show that the records they seek are relevant to the activities of a suspected terrorist or spy, a very low burden to meet, but one that will protect innocent Americans from unnecessary surveillance and ensure that government scrutiny is based on individualized suspicion, a fundamental principle of our legal system.

Unlike the Senate bill, the conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that such restrictions violate the First Amendment. While some have asserted that the FISA court’s review of a government application for a Section 215 order is equivalent to a judicial review of a gag order, the FISA court is not permitted to make an individualized decision about
whether to impose a gag order when it issues a Section 215 order. It is required by statute to include a gag order in every Section 215 order; the gag order is automatic and permanent. The recipient of a Section 215 order is entitled to, but does not receive, meaningful judicial review of the gag order.

The conference report does not sunset the National Security Letter (NSL) authority. As a result of the light of recent revelations about possible abuses of NSLSs, which were reported after the Senate passed its reauthorization bill, the NSL would sunset in four years so that Congress will have an opportunity to review the use of this power.

The conference report does not permit the government to notify the target of a ‘‘sneak and peek’’ search. After 30 days after the search, the government is required to provide a notification to the target. The conference report also does not permit the government to notify the target of an NSL unless the information is sought for a terrorism or espionage investigation. This will have a significant chilling effect on government unilateral authority to keep all evidence secret from a recipient is challenging an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and fails to give the target an opportunity to challenge the use of those records.

The conference report does not eliminate the catch-all provision that allows sneak and peek searches any time that notice to a subject would ‘‘seriously jeopardize’’ an investigation. This exception, could arguably apply in almost every case.

The conference report retains the Patriot Act’s overboard definition of domestic terrorism, which could include acts of civil disobedience by political organizations. While civic disobedience is and should be illegal, it is not necessarily terrorism. This could have a chilling effect on legitimate political activity that is protected by the First Amendment.

It is not too late to remedy the problems with the conference report’s reauthorization package that we can all support. The House could take up and pass the bill the Senate adopted by unanimous consent in July, or, if the additional modest but critical improvements to the conference report that the original cosponsors of the SAFE Act laid out prior to Thanksgiving are made, we believe the conference report can effectively and quickly pass both the House and the Senate this month.

We appreciate that since Thanksgiving, the conference agreed to include four-year sunsets of three controversial provisions rather than seven-year sunsets. But we should not just make permanent or, in the case three provisions, extend for another four years the most controversial provisions of the Patriot Act. The sunsets this year provide our best opportunity to make the meaningful changes to the Patriot Act that the American public has demanded. Now is the time to fix these provisions.

I would like to join you in opposing cloture on the conference report, and in supporting our call for the conferees to make additional improvements. We still have the opportunity to pass a good reauthorization bill this year. But to do so, we must amend the conference report, which fails short of the meaningful reforms that need to be made. We must ensure that when we do reauthorize the Patriot Act, we do it right. We still can—and must—make sure that our laws give law enforcement agents the tools they need while providing safeguards to protect the constitutional rights of all Americans.

Sincerely,


Mr. CRAIG. Mr. President, let me, for a moment, touch on something I think is important. This issue has spread beyond these walls and beyond this building.

The Idaho Legislature, my legislature in Idaho, by a resolution, a house joint memorial and a senate joint memorial to the Congress, asked that we support the SAFE Act. The SAFE Act was the passage of amendments that the Senate Judiciary Committee incorporated within our version of the reauthorization of the PATRIOT Act that passed this body unanimously.

From the beginning, those of us who have concerns about PATRIOT have had an uphill battle. Practically before the ink was dry on our bill—and certainly well before any committee had reviewed it—we faced a veto recommendation. Before they even read the Senate proposal, the PATRIOT OT’s defenders charged us with wanting to repeal the law and do away with all the tools it provided law enforcement to protect our country against terrorism.

Those charges were not true when we began, and they’re not true today. We are not trying to undo PATRIOT. If some Senators still believe that, well, the rest of the country does not.
Most of PATRIOT isn’t even at issue today—just a small part of the law is up for renewal. Of that small part, we are only focusing on a few controversial and very important provisions. And even for those few provisions in the small part of the law up for renewal, for most of us, the checks and balances, not repeal. And we have even been flexible about what shape those reforms should take. We introduced the SAFE Act, offering one way to “fix” what we saw as problems, but in the process we rejected a Senate Judiciary Committee bill that took a couple of different approaches.

Here is an interesting reaction: When we are dealing with constitutional freedoms, just a little can make all the difference. Some are saying that we are asking for so little, we should just drop it altogether. Our point is that it would take very little to close the gap and provide the assurances we are seeking. Our ask is very doable. The conference bill was passed into the very end of the year; changes were being made in the conference agreement even up to the day of its filing. We believe a limited timeframe would allow further discussion and an opportunity to get beyond whatever political issues are in the way. Some of us have even introduced legislation that would extend the expiring provisions of PATRIOT for 3 months, for this purpose.

Furthermore, it’s worth emphasizing that our concerns are not about insignificant or technical issues—they relate to what happens when innocent Americans come within the sphere of surveillance in antiterrorism investigations.

Regardless of what Americans think about the PATRIOT Act’s effectiveness, they also care about preserving their freedom within the fight against terrorism.

Let me read the resolution passed by the Idaho State Legislature earlier this year on the subject:

A JOINT MEMORIAL TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, do hereby respectfully represent that:

Whereas, the people of the state of Idaho strongly believe that basic civil liberties must be preserved and protected, even as we seek to guard against terrorist and other threats to the national security; and

Whereas, there are some principles of our democracy which are so fundamental to the rights of citizenship that they must be preserved to guard the very liberties we seek to protect; and

Whereas, legislation known as the SAFE Act has been considered in the Congress of the United States to adopt amendments to the Patriot Act which would address some of the most problematic provisions of the Act; and

Whereas, the SAFE Act amends the Patriot Act to modify the provision regarding the roving wiretaps to require that the identity of the target be given and that the suspicion be present during the time when surveillance is conducted; and

Whereas, the Act amends provisions governing search warrants to limit the circumstances when the delay of notice may be exercised and to require reports to the Congress—assailed by those concerned; and

Whereas, the SAFE Act requires specific and articulable facts be given before business records are subject to investigation by the Federal Bureau of Investigation; and

Whereas, the SAFE Act provides that libraries shall not be treated as communication providers subject to providing information and transaction record of the library patrons; and

Whereas, it is appropriate that the Legislature of the State of Idaho, on behalf of the citizens of Idaho, express support of the efforts of Senator Larry Craig to adopt the SAFE Act, and encourage the full support of the people; and

Now, therefore, be it Resolved by the members of the first Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate, that the SAFE Act...—

That the Idaho Legislature endorses the efforts to amend the Patriot Act to assure that it works well to protect our security but that it does not compromise essential liberties of the citizens of the United States. We urge the congressional delegation representing the State of Idaho in the Congress of the United States to support the legislation introduced by Senator Larry Craig, known as the SAFE Act.

This is just one of hundreds of such statements issued by states, cities, and communities across the Nation on this subject.

I have actually heard colleagues saying that because there have been no publicly reported abuses of PATRIOT Act powers, there is no justification for changing the law. Since when do we believe the government should be required to prove those checks and balances are there? To the contrary, the conference report never requires the government to demonstrate that a target be given and that the suspicion be present before the government can target innocent Americans. We believe the government should be required to convince a judge that the connection to a suspected terrorist or spy, as the three-part standard in the Senate bill would mandate.

We are asking for the House to swallow the entire Senate bill. Instead, we have identified a few areas where we believe improvements could and should be made, and I think the House has those changes would be welcomed by a substantial number in that body.

To those of my colleagues who are telling us to “quilt while we’re ahead,” I say: where would we be if they had stopped at the First Amendment of the bill of Rights? Should they have quit while they were ahead, and forgotten about those other nine amendments? Are we imperious? Let’s allow a little more time for the process to work, and respond to the concerns that our citizens have expressed.

1. The changes we are seeking:

The conference report that we are voting on would only allow the government to obtain library, medical and gun records and other sensitive personal information under Section 215 of the PATRIOT Act on a mere showing that the records are relevant to an authorized intelligence investigation. As business groups like the U.S. Chamber of Commerce have argued, this would allow government fishing expeditions targeting innocent Americans. We believe the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy, as the three-part standard in the Senate bill would mandate.

The conference report that the language in the conference report would permit the government to use the “relevance” standard only in limited, extraordinary circumstances, and that the Senate bill’s three-part standard would continue to apply in all other circumstances. To the contrary, the conference report never requires the government to demonstrate that the individual whose records are sought is connected to a terrorist or spy; rather, it permits the “relevance” standard to be used in every case.

It has also been asserted that the government should not be required to
abide by the three-part Senate standard because the Department of Justice demonstrated in a classified setting that “circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist, but nevertheless be relevant to an authorized terrorism investigation.” We are convinced, however, that the three-part standard provides the necessary flexibility in such circumstances. Indeed, the government need show that the records they seek are relevant to the activities of a suspected terrorist or spy, a very low burden to meet, but one that will protect innocent Americans from unnecessary surveillance and ensure that government scrutiny is based on individualized suspicion, a fundamental principle of our legal system.

Unlike the Senate bill, the conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. While it is true that similar restrictions violate the First Amendment. While some have asserted that the FISA court’s review of a government application for a Section 215 order is equivalent to judicial review of the gag order, the FISA court is not permitted to make an individualized decision about whether to impose a gag order when it issues a Section 215 order. It is required by statute to include a gag order in every Section 215 order; the gag order is automatic and permanent in every case. The recipient of a Section 215 order is entitled, but does not receive, meaningful judicial review of the gag order.

The conference report does not sunset the National Security Letter, NSL, authority. In light of recent revelations about possible abuses of NSLs, which were reported after the Senate passed its reauthorization bill, the NSL provision sunset is more than four years so that Congress will have an opportunity to review the use of this power.

The conference report does not permit meaningful judicial review of an NSL’s gag order. It requires the court to accept as conclusive the government’s assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. As a result, the judicial review of NSL gag orders does not create a meaningful right to review that comport with due process.

The conference report does not retain the Senate protections for “sneak and peek” search warrants, as Chairman Specter’s letter suggests. The conference report requires the government to notify the target of a “sneak and peek” search within 30 days after the search, rather than within 7 days, as the Senate bill provides and as pre-PATRIOT Act judicial decisions required. That 7-day period was the key safeguard included in the Senate sneak and peek provision. The conference report should include a presumption that no

tice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial time frame will ensure timely judicial oversight of this highly intrusive technique but do not create undue hardship on the government.

Unlike the Senate bill, the conference report requires a person who receives an NSL to notify the FBI if he does not agree with NSL and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

Unlike the Senate bill, the conference report for the first time imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order, even if the NSL recipient believes his rights have been violated.

The conference report for the first time gives the government the power to go to court to enforce an NSL, effectively converting an NSL into an administrative subpoena. An NSL recipient could now potentially be held in contempt of court and subjected to serious criminal penalties. The government has not demonstrated a need for NSLs to be court enforceable and has not given any examples of individuals failing to comply with NSLs.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging an NSL, regardless of whether evidence is classified. This will make it very difficult for an NSL recipient to obtain meaningful judicial review that comports with due process.

As with Section 215, the conference report fails to require notice to the target of an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and fails to give the target an opportunity to challenge the use of those records.

The conference report does not eliminate the catch-all provision that allows sneak and peek searches any time that notice to a subject would “seriously jeopardize” an investigation. This exception could arguably apply in almost every case.

Many of my colleagues say the PATRIOT Act is just giving law enforcement powers in terrorism investigation what they already have in drug investigation.

Well not here. The conference report does not include meaningful checks on “John Doe” roving wiretaps, a sweeping power never authorized in any context by Congress before the PATRIOT Act. A John Doe initially wiretap does not identify the person or the phone to be wiretapped. Unlike the Senate bill, the conference report does not require that a roving wiretap include sufficient information to describe the specific person to be wiretapped with particularity.

The conference report does not require the government to determine whether the target of a roving intelligence wiretap is present before beginning surveillance. An ascertainment requirement, as has long applied to roving criminal wiretaps, is needed to protect innocent Americans from unnecessary surveillance, especially when other electronic communications, including e-mail and Internet, are at stake.

In light of the vast amount of sensitive electronic information that the government can now access with pen/trap devices, modest safeguards should be added to the pen/trap power to protect innocent Americans, but the conference report does not do so.

The conference report retains the PATRIOT Act’s overbroad definition of domestic terrorism, which could include acts of civil disobedience by political organizations. While civil disobedience is and should be illegal, it is not necessarily terrorism. This could have a significant chilling effect on legitimate political activity that is protected by the First Amendment.

While the issues discussed above are the core concerns about the conference report that the original cosponsors of the SAFE Act asked to be modified, they are not the only problems that we see with the conference report. There are a number of other areas where we believe the conference report falls short.

Unlike the Senate bill, the conference report requires a person who receives a Section 215 order to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging a 215 order, regardless of whether the evidence is classified. This will make it very difficult for the recipient of a Section 215 order to obtain meaningful judicial review that comports with due process.

Unlike the conference report, the target of a Section 215 receives notice that the government has obtained his sensitive personal information and never has an opportunity to challenge the use of this information in a trial or other proceeding. All other FISA authorities—wiretaps, physical searches, pen registers, and trap and trace devices—require such notice and opportunity to challenge.

The conference report would allow the government to issue NSLs for certain types of sensitive personal information, such as the simply identifying that the information is sought for a terrorism or espionage investigation. This would allow government fishing expeditions
targeting innocent Americans. As business groups have argued, the government should be required to certify that the person whose records are sought has some connection to a suspected terrorist or spy.

Agreed, Mr. President. What is important is to understand and plead with our colleagues—that how you negotiate is through power and leverage, not to give up and walk away. I am not going to suggest that the chairman did that at all. He and I dialogue many times over the course of the last 2 weeks as to what we might do to gain greater position, to gain the Senate position with the House.

My compliments to him for the successes that are in the conference report because there are some. But my frustration is that what we did in the Senate in this very important instance has not been adhered to. Those safeguards have not been put in place to the extent that we had asked. And I believe it is reasonable and right to say: No, let us live for 3 more months with the current law while we attempt to achieve even greater protection for the private citizens of this country but most importantly to recognize that the law enforcement community needs that time to ask permission and to show that they have very real reason to believe that somebody is involved.

I think it has been a very excellent debate which has gone on the floor of the House. But there is a reality check. That reality check is a vote on the conference report, and I ask my colleagues to vote against cloture so we can reenter this debate one more time with the House to make sure we get it right so that the first amendment and the fourth amendment are not, in some way, in jeopardy.

I yield the floor.

Mr. SPECTER. Mr. President, I have worked very closely with the distinguished Senator from Idaho, as he noted, on this matter, with lots of discussions and lots of dialog. He and I worked together on the Ruby Ridge investigation, as Senator LEAHY was involved on the other side of the aisle. That was a high watermark of congressional oversight protection of the individual rights.

I have a long history with Senator CRAIG and agree with him that you don’t compromise on civil liberties. What you do with civil liberties is you protect them.

But I submit to my colleague from Idaho that we have protected.

I ask him: He starts off with the delayed notice. The pejorative term is “sneak and peek.” Delayed notice is when the law enforcement official shows the judge, the impartial arbiter between the citizen and law enforcement, that there are reasons to have delayed notice.

Ordinarily, you have a search-and-seizure warrant. The target knows that right away.

The current bill provides for “reasonable period of time,” which could mean anything. Some have gone for enormous periods of time. The House came in at 180 days and the Senate came in at 7 days. We were not unaware in picking 7 days we were starting a negotiating track. We were not going to have 180 days. The Fourth Circuit said 45 days is presumptively reasonable and we ended up with 30.

I ask my colleague from Idaho, is it a compromise of civil liberties to have a 30-day notice period where you change the existing law from what is essentially a warrant, 7 days, a week, and the House comes down 150 days and we go up 30 days; is that a compromise?

Mr. CRAIG. I know my chairman thinks that is a success. First, we have broken and entered a private citizen’s home without telling them. Does it take 30 days for law enforcement to determine that they have found is so valuable that they cannot tell the citizen they have broken into their home? Why not 7 days? And then to go to a judge with the evidence you have established by that “break-in”—because that is what you have done. My home is my sanctuary. We have said, yes, we are going to let you break and enter, sneak and peek, but we are going to make sure it is very limited.

So I don’t view 30 days as a compromise. Seven days. You were right to begin with. You are wrong now.

Mr. SPECTER. You cannot take all my territory.

I will ask another question but may make the argument.

Mr. CRAIG. If the Senator will yield, I will be kinder.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor. Mr. SPECTER. No, no.

Mr. CRAIG. All right.

Mr. SPECTER. All of this effort to get the floor and I will yield right away? Absolutely not.

The purpose of the floor is not to show what they have gotten is valuable. The time is in order to enable them to conduct an investigation. They got the order initially because they showed a judge, an impartial magistrate, that there was a reason to think if the target knew, it would impede the investigation.

I will let my 98 colleagues evaluate whether that is a compromise on civil liberties.

The letter which the Senator from Idaho refers to, which was filed yesterday and printed in the RECORD, I have already put the reply into the RECORD, which we circulated today. In that letter, the assertion made that the Foreign Intelligence Surveillance Court is not permitted to make an individualized decision about whether to impose a gag order when it issues a section 215 order is incorrect. That is not right. The statute provides there may be a petition to the court for review of the 215 order and the Foreign Intelligence Surveillance Court has the authority at that point to say there will be no gag order.

When the Senator from Idaho puts in his letter that they want a sunset on the national security letter, I point out to him the PATRIOT Act does not establish the national security letter. That has been in existence for decades. It is a result of the application, not the establishment.

Mr. SPECTER. Regular order, Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. The PATRIOT Act does not establish the national security letter. But the PATRIOT Act was used as a vehicle for extending civil rights, which the Senator from Idaho is concerned about. He is a civil libertarian and so am I. When he introduced the so-called SAFE Act to cut back on the PATRIOT Act, and he came to me and asked, Would you cosponsor it, I immediately said yes. But when we structured the PATRIOT Act, we took into consideration the need, and we said, is this an occasion where we ought to rein in the national security letter. And we did so by saying the recipient did not have to keep quiet—which you have to do under existing law—that you could go to a lawyer. I don’t think you ought to have to have legislative authority to go to a lawyer. But we made no bones about it. We were not going to leave that to chance, and we said you can go to a lawyer. Then that lawyer could go to court and quash the national security letter if it is unreasonable.

The standard of “reasonable” is all over the law. It is what a reasonable person would do. It controls tort law, accidents, reasonable personal negligence, it controls antitrust law, reasonable restraints. The court has plenary authority, full authority to quash the national security letter if it is unreasonable.

Now, when you come to the point about disclosure, you are dealing with some pretty tough stuff. You are dealing with national security. The Senate bill that went through without objection by anyone, including the Senator from Idaho, has a provision that there is a conclusive presumption if the Government certifies that it will impede national security or harm foreign relations. But in the conference report, in part because Senator CRAIG was vigilant in talking to us about the conference report, we are not enough. It ought to be on the Government, some law enforcement officer in the field. We put in the requirement it had to be the Attorney General or Deputy Attorney General, head of the FBI, or Assistant Attorney General—all positions which are confirmed by the Senate, so they are ranking positions. We saw to it that the national security letter was reined in. We also saw to it that the wiretaps were reined in. Here we had the big argument about the sunset. I almost had a feeling in one long telephone conversation with Senator CRAIG about 10 days ago that if we got a 4-year sunset, which was a
golden prize—the House wanted 10 years and the Senate had 4 years; the House wanted the compromise on 7, halfway between; we said no, we are not going to do that. This was a matter of great importance to many Senators, especially to Senator Craig. So we can review all of this and see what we have oversight. I almost thought if we got 4 years, we would get Senator Craig. He is nodding in the negative.

Mr. CRAIG. It was third on my list.

Mr. SPECTER. We did not get Senator Craig.

Mr. President, when the six Senators wrote a letter with a lot of concerns, we responded with a seven-page letter. When yesterday we received a letter with nine Senators, we responded with an eight-page letter which the staff has worked on. We have had extraordinary staff working on all sides. This goes for my staff, this goes for Senator LEAHY’s staff. The Judiciary Committee has not had any time off. We had an August recess for the Senate but not for the Senate Judiciary Committee.

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

Mr. SPECTER. In that event, I stop.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:47 p.m., recessed until 2:15 p.m., and reassembled when called to order by the President.

The PRESIDING OFFICER. Under the previous order, the time from 2:15 until 3:30 shall be equally divided between the two leaders or their designees.

Mr. BAUCUS. I thank the Chair (The remarks of Mr. BAUCUS pertaining to the introduction of S. 2107 are located in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mr. BAUCUS. Mr. President, I thank the Senators from Oklahoma and Idaho for their courtesy. There were three of us scheduled to speak at the same time. Obviously, that is very difficult to do. These two Senators graciously allowed me to go ahead. I thank them both.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Oklahoma.

LABOR-HHS APPROPRIATIONS CONFERENCE REPORT

Mr. COBURN. Mr. President, I wish to spend a few minutes of my time talking about the Labor-HHS bill and a lot of the comments we have heard in the Chamber over the last couple days as to what we are and are not doing. I thought the American public should have a good perspective about what has happened in terms of the growth of this department since the fiscal year 1998 started.

This is a tight budget. I commend those who are in charge of it. It is a vast improvement over what we have done in other years. There is no question there are some unmet needs that can be claimed out of this appropriation bill. That is the time we face in our country. The Federal Government cannot meet all of our needs.

In regard to history, Health and Human Services from 1998 to 2005, over that 8-year period, in real dollars has increased at over 10 percent per year. It has actually increased over 13 percent per year, but we have had inflation of 7 percent per year. So there is an actual doubling of the size of that component of the Federal Government from September 30 of 1997 to today. It has doubled in size. Education is the same. Actually, education more than doubled in size, net of inflation. That is in terms of real dollars. So when we hear the words that we can’t do what we are doing, I would have our fellow colleagues look down the road a little bit. This is just a taste of what we are going to be debating if we don’t start making the choices based on priority.

I tell you, we are on an unsustainable path even with this bill. We cannot meet those needs that need to be met if we continue to not prioritize in the functioning of the Federal Government.

Again, I take seriously the claim that we would take away food stamps from people who have no other source of nutrition. But I also take seriously the claim made by the Department of Agriculture and the Food Stamp Program that last year they paid out $1.6 billion in food stamps to people who were ineligible, who had other sources of income. And yet they continued to spend $1.6 billion.

Why is all this important? It is important because this last year, ending September 30, we spent $338 billion more in that fiscal year than we took in. So the debate is not be in the context of what are we doing to our children and our grandchildren. We have to make a measured balance about how we make these decisions.

The decision of trimming programs that are not effective and doing the hard oversight—the real thing that is lacking is us doing the work of oversight. We have opportunities lost when we don’t put money into those programs that are more effective and take money from those programs that are less effective.

The debate is centered about us and our constitutional duties to do oversight but also in terms of the future and what kind of heritage and legacy in terms of debt are we going to leave to our children and the knowledge reported by the Department of Agriculture and the Food Stamp Program that last year they paid out $1.6 billion in food stamps to people who were ineligible, who had other sources of income. And yet they continued to spend $1.6 billion.

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The decision of trimming programs that are not effective and doing the hard oversight—the real thing that is lacking is us doing the work of oversight. We have opportunities lost when we don’t put money into those programs that are more effective and take money from those programs that are less effective.

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As the ranking member of the Appropriations Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and related agencies, I am here today to tell my colleagues that an additional 1-percent cut, or even a 2-percent cut across the board, will not be harmless. It will chip away at the Federal safety net that protects our vulnerable neighbors, and it will undermine the safety of our commercial aviation system.

Before I turn to the specific cuts, let me say that I believe that a small cut will not have a big impact. I can tell you, as a member of the Appropriations Committee, that is not the case. Let me talk about some of the specific ways these cuts will undermine American families in areas such as transitional housing for the homeless, taking help away from the Katrina victims. We must not renounce our commitment to helping these victims. We must not make it worse by reducing the Federal programs that provide to the FAA and the ability of America’s cities to rebuild American cities such as New Orleans and Biloxi, we can only do it on the backs of vulnerable Americans. We can only do it by cutting other priorities that are sacred to me.

That is the wrong message. It is the wrong priority, and America can do better than that. That Republican idea should offend every American taxpayer who believes that the first and greatest responsibility of the Federal Government should be the well-being of our own people. Nonetheless, that is the position of the Republican leadership in this Congress. As a result, we are now being told that, if we want to help the victims of Hurricane Katrina, we have to cut every Federal program across the board, no matter how much those cuts will hurt our safety, our economy, or our security.

Some Senators may try to suggest that a small cut will not have a big impact. I can tell you, as a member of the Appropriations Committee, that is not the case. Let me talk about some of the specific ways these cuts will undermine American families in areas such as transitional housing and housing and in aviation. I know those areas well because of the across-the-board cut that were made in the appropriations bills.

Second, those proposed Republican cuts will make life harder for the victims of Hurricane Katrina and for the vulnerable families throughout our country. Hurricane Katrina revealed the harsh truth about poverty in America in 2005. Many people lost what little they had. There are still thousands of victims of that hurricane who are without adequate housing. Some of them are living in tents. Some are still in hotels, wondering when they are going to be able to move back home and get back up with their relatives. And still others have been dispersed all across the country, wondering how they are going to pay for housing when they are earning no income. Neither FEMA nor HUD have done an adequate job addressing the critical housing needs of these Americans.

So here we are trying to address those needs with a supplemental appropriations bill, and Republican leadership is saying if you want to help these Katrina victims, you have to cut housing assistance for other vulnerable families. I think that is the wrong way to go about it. I think that in order to help the victims of Hurricane Katrina is by taking housing away from other needy families. Those cuts would mean that more than 35,000 families will lose the help in housing that they get today through HUD’s tenant-based housing assistance program.

Those cuts also threaten to eliminate transitional housing for 1,200 homeless citizens. Think about it. Cutting housing for the homeless, taking help away from the Katrina victims through HUD’s transitional housing for 1,200 homeless families right before the holidays—that does not reflect my values and that does not reflect my priorities.

In the immediate aftermath of Hurricane Katrina, public housing agencies across America opened their doors and sought to make emergency housing available to the citizens who had to evacuate New Orleans. I saw it even in my home State where housing agencies worked hard to help the victims of Hurricane Katrina is by taking housing away from other needy families. Most of those housing agencies already had long waiting lists of low-income families waiting for a unit or for a voucher. By accommodating those Hurricane Katrina victims, those housing agencies effectively pushed their own local citizens further down that very long waiting list.

We should not now make it worse by eliminating vouchers for 35,000 families in order to pay for the additional aid for the Katrina victims. We must not come to the aid of victims of Hurricane Katrina by creating still other victims around the country through these misguided cuts.

These cuts will hurt jobs and transportation. They will hurt the homeless and other families who are living on the brink. And these cuts will affect the safety of our air travel in this country.

I addressed the Senate on this issue of aviation safety on October 6, and I did so because I thought it was critical that all Senators understand the relationship between the levels we provide to the FAA and the ability of that agency to ensure that the American people are safe when they board an aircraft.

The holidays are upon us. Thousands of American families are going to board planes shortly to gather with their families across America. When they do, they have the right to expect that we in Congress are doing everything in our power to ensure that they will continue to benefit from the safest aviation system in the world.

Yet the reality is that the FAA is facing an unprecedented budget challenge in adequately staffing its air traffic control facilities with fully trained professionals. And the agency is also challenged when it comes to deploying an adequate number of fully trained aviation safety inspectors to oversee the safety practices of our Nation’s airlines.

As I explained back on October 6, over the last few years our national aviation enterprise, airlines, airports, and the FAA, have been under an unprecedented amount of financial pressure. We now have no fewer than six airlines in bankruptcy, and that number could grow.

In the interest of cutting costs, airlines have been cutting back on staff, renouncing their pension plans, and outsourcing an increased percentage of their aircraft maintenance.

I know many Senators like me who travel home every weekend have noticed those changes in the services the airlines offer. Staffing is leaner than ever, and flight delays and mechanical problems are on the rise.

Airlines are now contracting out the maintenance of their aircraft, and a small cut to third parties, including, my colleagues should know, many overseas vendors who are known as foreign repair stations.

Let me say that again.

Aircraft maintenance work is being contracted out to overseas vendors who are known as foreign repair stations.

In the past, airlines maintained their planes with experienced veteran unionized mechanics. Today, the FAA is forced to source more than 50 percent of their maintenance work to independent operators. Airlines, such as Northwest, send some of their aircraft as far as Singapore and Hong Kong for heavy maintenance. We have one major carrier, JetBlue, that sends a large portion of its all-airbus fleet to be maintained in El Salvador, Central America. That is where those planes have mechanics that work on them. America West Airlines, now owned by U.S. Airways, sends more than 50 percent of its maintenance work to independent operators. Airlines, such as Northwest, send some of their aircraft as far as Singapore and Hong Kong for heavy maintenance. We have one major carrier, JetBlue, that sends a large portion of its all-airbus fleet to be maintained in El Salvador, Central America. That is where those planes have mechanics that work on them.

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Mr. OBAMA. Mr. President, 4 years ago, following the most devastating attack in our history, this Senate passed the USA PATRIOT Act in order to give our Nation’s law enforcement the tools they need to track down terrorists who plot and lurk within our own borders and all over the world; terrorists who, right now, are looking to exploit weaknesses in our laws and our security to carry out attacks that may be even deadlier than those that took place on September 11.

We all agree we need legislation to make it harder for suspected terrorists to go undetected in this country. And that is why we need to make it harder for them to organize and strategize and get flight licenses and sneak across our borders. Americans everywhere wanted to do that.

But after the PATRIOT Act passed, a few years before I even arrived in the Senate, I began hearing concerns from people of every background and political leaning that this law, the very purpose of which was to protect us, was also threatening to violate some of the rights and freedoms we hold most dear; that it does not just provide law enforcement the powers it needed to keep us safe but powers it did not need to invade our privacy without cause or suspicion.

Now, in Washington, this issue has tended to generate into the typical either-or debate: Either we protect our people from terror or we protect our most cherished principles. I suggest this is a false choice. It asks too little of us and it assumes too little about America.

That is why, as it has come to time to reauthorize the USA PATRIOT Act, we have been working in a bipartisan way to do both, to show the American people that we need not choose between keeping terrorists without trampling on our civil liberties, to show the American people that the Federal Government will only issue warrants and execute searches because it needs to do so, not because it can do so.

What we have been trying to achieve under the leadership of a bipartisan group of Senators is some accountability in this process to get answers and see evidence where there is suspicion.

Several weeks ago, these efforts bore fruit. The Judiciary Committee and the Senate managed to pass a piece of bipartisan legislation that, while I cannot say is perfect, was able to address some of the most serious problems in the existing law. Unfortunately, that strong bipartisan legislation has been tossed aside in conference. Instead, we have been forced to consider a piece of rushed legislation that fails to address the concerns of Members of both parties, as well as the American people.

This is legislation that puts our own Justice Department above the law. When national security letters are issued, they allow Federal agents to conduct any search on any American, people we have track down, without even going before a judge to prove the search is necessary. All that is needed is a signoff from a local FBI agent. That is it.

Now, when a business or a person receives notification they will be searched, they are prohibited from telling anyone about it and they are even prohibited from challenging this automatic gag
order in court. Even though judges have already found that similar restrictions violate the first amendment, this conference report disregards the case law and the right to challenge the gag order.

If you do decide to consult an attorney for legal advice, hold on; you will have to tell the FBI you have done so. Think about that: You want to talk to a lawyer about whether your actions are going to be causing you to get into trouble, you have to tell the FBI that you are consulting a lawyer. This is unheard of. There is no such requirement in any other area of the law. I see no reason why it is justified here.

If someone wants to know why their own Government has decided to go on a fishing expedition through every personal record or private document, through the library books you read, the phone calls you have made, the e-mails you have sent, this legislation gives people no rights to appeal the need for such a search in a court of law. No judge will hear your plea; no jury will hear your case. This is plain wrong. It is an attack on Republican Senators as well as Democratic Senators who recognize it is plain wrong.

Giving law enforcement the tools they need to investigate suspicious activities is one thing and it is the right thing. But doing it without any real oversight seriously jeopardizes the rights of all Americans and the ideals America stands for.

Supporters of this conference report have argued we should hold our noses and support this legislation because it is not going to get any better. That is not a good argument. We can do better. We have time to do better. It does not convince me I should support this report. We owe it to the Nation, we owe it to those who fought for our civil liberties, we owe it to the future and our children to make sure we craft the kind of legislation that would make us proud. We must craft a resolution we would settle for because we are in a rush. We do not have to settle for a PATRIOT Act that sacrifices our liberties or our safety.

We can have one that secures both.

There has been proposals on both sides of the aisle and in both Houses of Congress to extend the PATRIOT Act for 3 months so we can reach an agreement on this bill that is well thought through. I support these efforts and will oppose cloture on what I consider to be this unacceptable conference report.

I yield the floor and suggest the adjournment of the Senate until 3:30 p.m. having arrived, the Senate will resume consideration of the House message accompanying S. 1932. The clerk will report.

The bill clerk reads as follows:

A bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

Pending:

DeWine motion to instruct conferences to insist that any conference report shall not include the provisions contained in section 801 of the House amendment relating to the repeal of section 754 of the Tariff Act of 1930.

Kohl motion to instruct conferences to insist that any conference report shall not include any of the provisions in the House amendment that reduce funding for the child support program established under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.), and to insist that the conference report shall not include any restrictions on the ability of States to use Federal child support incentive payments for child support program expenditures that are eligible for Federal matching payments.

Kennedy motion to instruct conferences to insist that the Senate provisions increasing need-based financial aid in the bill, S. 1932, which were fully offset by savings in the bill, S. 1922, be included in the final conference report and that the House provisions in the bill, H.R. 4241, that impose new fees and costs on students in school and in repayment be rejected in the final conference report. Reid motion to instruct conferences to insist on a provision that makes available $2,920,000,000 for the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 6221 et seq.), in addition to the $2,183,000,000 made available for such act in the Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Act, 2006.

Mr. GREGG. Mr. President, I ask unanimous consent that the yeas and nays have been ordered on the next four items which are set for votes.

The PRESIDING OFFICER. Without objection, it is in order to request the yeas and nays en bloc.

Mr. GREGG. I ask for the yeas and nays en bloc.

Mr. DEWINE. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. What is the request?

Mr. GREGG. The point of the request is to allow the yeas and nays on each item and that they be voted on seriatim.

Mr. DEWINE. I withdraw my reservation.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered en bloc.

Mr. GREGG. Mr. President, I ask unanimous consent that after the first vote, the subsequent votes be 10 minutes in duration.

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

MOTION TO INSTRUCT CONFEREES

The PRESIDING OFFICER. Who yields time on the first motion? The Senator from Ohio.

Mr. DEWINE. Mr. President, I urge my colleagues to vote yes on this motion to instruct the conference to support something that 72 Senators have already supported in letters they have signed in the past, 72 Members of this institution and I have the list for anyone who would like to see it when they come to the Chamber.

This is to support a bill that is currently law, the Continued Dumping and Subsidy Offset Act. It is a bill that has helped companies in 48 States across this country. More importantly, it has helped workers in 48 States across this country. It has helped employers who create additional jobs. The idea is to compensate companies that have been victimized by illegal foreign dumping in this country. Instead of giving money to the Treasury, it goes to these companies, and these companies have the right then to reinvest and create jobs.

Some people have argued this is some kind of special interest. I ask Members of the Senate, when in the world did it become a special interest to protect American jobs?

This is a proven way to fight back against illegal trade. It is a proven way to protect American jobs. I urge a "yes" vote.

Mr. BYRD. Mr. President, I wish to join my Republican colleagues, Senator DEWINE, Senator SPECTER, and Senator BACHUS, all of whom have already spoken so eloquently in support of a motion introduced by Senator DEWINE yesterday to instruct conferences on the budget bill to strike an ill-conceived House provision that would repeal the Continued Dumping and Subsidy Offset Act, also known as CDSOA.

To repeal or abandon this trade law would be a travesty. The Continued Dumping and Subsidy Offset Act was enacted to save American manufacturing and our agricultural producers from unfair dumping of unfairly dumped foreign imports.

CDSOA remains one of the most successful trade programs ever enacted. It maintains America's corporate competitiveness; it enables small and medium-sized businesses—and family-owned businesses—to invest in their futures. It keeps American workers employed, so they can receive health and pension benefits. This law is about American jobs. As Senator DEWINE said yesterday, this law is not about rewarding special interests; it is about keeping American jobs.

Five years ago, a bipartisan majority of the Senate approved our amendment to give U.S. companies injured by unfair trade the ability to invest in their factories and workers with funds collected by the Customs Service from unfairly traded imports. I particularly appreciate the continued strong support that Senator DEWINE and many of our colleagues on the other side of the aisle continue to express for this law. In fact, three-fourths of the Senate has publicly pledged support for the law.
Before this law was enacted, the Customs Service imposed antidumping and countervailing duties on dumped and unfairly subsidized imports—to make foreign exporters stop dumping and charge a fair price. Despite Customs’ efforts, unfair foreign traders refused to stop dumping, prompting the administration to ask Congress to pass legislation to combat dumping—year after year. And the prices of the dumped foreign imports from China, Canada, the European Union, Japan, and other countries continued to unfairly undercut the prices of American-made products sold here in the United States.

Faced with eroding U.S. market share, American producers struggled to stay afloat, unable to invest in new plants or equipment or to meet their payrolls. This was particularly true for small businesses and many of our Nation’s family farmers, ranchers, and aquacultural producers. Even today, valiant producers of shrimp and crawfish continue to suffer from having endured a double whammy: unending unreimbursed antidumping duties collected from unfair imports to those American companies and workers who can prove that they have been materially injured by unfair trade.

The amounts distributed under the program are not large from a budget perspective—approximately $226 million for fiscal year 2005—the law is critically important to American companies and workers who continue to work hard to stay in business, even when foreign producers refuse to stop dumping. American companies that rightfully receive distributions under the law include producers of crawfish, garlic, furniture, honey, lumber, wheeled cargo containers, salmon, salmonids, chips, bearings, mushrooms, crawfish, pasta, steel, raspberries, cement, and a long list of others—all of which deserve to be reimbursed under the law for having suffered the negative effects of bringing successful trade cases against illegal dumped imports year after year.

There was a claim on the Senate floor earlier this week that CDSOA claims may be fraudulent. That shows a misunderstanding of the law. To receive reimbursement under the law, companies must certify, in writing, that they have made qualifying expenditures in their workers and facilities. CDSOA reimburses them for those expenditures. And Customs may verify that a request for reimbursement is valid. So there are very careful safeguards in place under the law to be certain that funds are distributed fairly, honestly, and legally.

The result of the Continued Dumping and Subsidy Offset Act also argue that the WTO has ruled against the law, so we should abandon it. But the WTO was wrong in opposing it. The WTO was overzealous in ruling against the law: it overreached. The WTO decision against this trade authority was technically beyond the scope of the WTO’ legal mandate. The WTO incorrectly read into international agreements a prohibition against dumping that was never agreed to by any U.S. trade negotiator. The WTO has no legal basis to request that the United States repeal this law.

Nearly 800 American companies and workers in nearly every State of the Nation receive distributions under its provisions. It is critical to family-owned businesses, like Warwood Tools in Wheeling, WV, and to Wheeling-Pittsburgh Steel, and to Mittal Steel’s facilities in Weirton, WV. It is equally important to the thousands of steelworkers in Ohio, Pennsylvania, and elsewhere across the Nation. They, and all hard-working Americans, deserve to continue to receive these funds so long as foreign dumping continues. If our trading partners don’t like this trade law, I have only two words for them: stop dumping.

In the fiscal year 2004 and 2005 Consolidated Appropriations Acts—and, now, in the fiscal year 2006 Continuing Appropriations Act—both Houses of Congress included language that directs the administration to negotiate a solution to the WTO dispute concerning this law. In fact, the conference report on the CJS bill that contains this language was approved by the Senate on November 16 by an overwhelming vote of 94 to 5. Pursuant to these congressional directives, the administration last year put this trade law on the table in the Doha Round of trade negotiations, and the USTR even told our trading partners that it agrees it is “beyond question that countries have the sovereign right to distribute duties as they deem appropriate.”

Even if the WTO disagrees with the law, any retaliation by other countries against us is negligible—equal to only a few hours of trade among a few of our trading partners.

Currently, the United States and other nations are seeking to complete negotiations in the Doha Round of international trade talks by the end of 2006. Now is not the time to weaken the hand of our trade negotiators by attempting to repeal one of our Nation’s most prominent and effective trade laws.

In fact, now is the time to do more to hold foreign unfair traders accountable, not less.

I urge my colleagues in the Senate to join me in support of this motion to instruct the conferees to strike from the budget reconciliation bill any provision that would repeal this critical trade law.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, this proposal is a motion to instruct which has no binding effect and, thus, I assume Members are just going to vote the way they feel like voting.

I will point out this: No. 1, the effect of this motion, if it had a binding effect, would be to take $3 billion away from the Federal Treasury and give it to specific companies in violation of a WTO ruling. It may have made sense at one time, but since the WTO ruling, it makes no sense. Because of that ruling, other companies are now being penalized inappropriately because we continue to assess this fine. No. 2, it is very hard for me to understand why, in a bill that is supposed to be reducing the deficit, we would want to increase the deficit by passing this type of instruction. Therefore, I oppose the motion to instruct.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBILLS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Georgia (Mr. ISAKSON), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Pennsylvania (Mr. SANTORUM) would have voted ‘yea.’

Mr. DURBin. I announced that the Senator from Delaware (Mr. BUDIN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER), would vote ‘aye.’

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

The result was announced—yeas 71, nays 20, as follows:

(Rollcall Vote No. 354 Leg.)

YEAS—71

Akaka
Allen
Baucus
Bayh
Bennett
Berman
Bunning
Burns
Butler
Byrd
Capper
Cochran
Coleman
Collins
Conrad
Corzine
Craig
Cromer
Corzine
Corsino
Cox
Dayton
DeWine
Dole

Domenici
Dorgan
Donnelly
Durbin
Enzi
Feingold
Feinstein
Harkin
Hatch
HATCHett
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
LIEberman
Lincoln
Lott
Martinez
Mikulski

Murray
Byrd
Baucus
Biden
Reno
Feingold
Feinstein
Harkin
Hatch
HATCHett
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
LIEberman
Lincoln
Lott
Martinez
Mikulski

Dole

Brownback
Bonda

DeMINT

NAYS—20

Alexander
Allard

Chafee
DeMINT

Shelby
Reid
Specter
Shaboneau
Stevens
Talent
T umee
Voinovich
Warner
Wyden

Shelby
Reid
Specter
Shaboneau
Stevens
Talent
T umee
Voinovich
Warner
Wyden
The motion was agreed to.

CHANGE OF VOTE

Mr. ROBERTS. Mr. President, on rollcall vote 354, I voted ‘yea.’ It was my intention to vote ‘nay.’ Therefore, I ask unanimous consent that I be permitted to change my vote so that it will not affect the outcome.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. VITTER. Mr. President, I ask that the RECORD show that I would have voted ‘aye’ on rollcall vote 354, the DeWine motion to instruct conferences on S. 1932. I continue to support the Continued Dumping and Subsidy Offset Act, and I agree that its repeal should not be included in the conference report.

Mr. SANTORUM. Mr. President, I regret that I was unable to vote this afternoon on the DeWine motion to instruct conferences with respect to S. 1932, the deficit reduction bill.

The DeWine motion to instruct conferences was crafted with the goal of preventing Senate conferences to S. 1932 from agreeing with the House provision that repeals the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) during conference deliberations. Despite widespread support for this provision of law, the House companion bill repeals CDSOA. I have been a supporter of CDSOA since it was first crafted by Senator Mike DeWine of Ohio.

Mr. President, I ask that the RECORD reflect that, had I been here, I would have voted in favor of Senator DeWine’s motion to instruct conferences to not repeal CDSOA during conference deliberations on S. 1932.

I ask unanimous consent that my letter of November 29, 2005, to the Honorable Charles Grassley, Chairman, Committee on Finance, on the need to maintain CDSOA, be printed in the RECORD.

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

DEAR CHAIRMAN GRASSLEY: I write today concerning a provision contained in H.R. 4241, the House-passed savings reconciliation bill, that repeals the Continued Dumping and Subsidy Offset Act of 2000 (P.L. 106-387). The Senate companion bill, S. 1932, does not include this repeal. I am optimistic that the Senate will not concur with the House action during conference deliberations on this bill. Please know that I was a cosponsor of the free-standing bill introduced by Senator Mike DeWine that was the blueprint for this amendment.

Over two years ago, the World Trade Organization (WTO) ruled that the Byrd Amendment was inconsistent with the United States’ WTO obligations. The WTO has since authorized eight WTO members to retaliate against the United States. Canada, the European Union, Japan and Mexico have imposed about $115 million in retaliation on U.S. exports after the United States failed to meet a December 2003 WTO deadline for repealing the act.

However, in H.R. 2678, the Fiscal Year 2004 Consolidated Appropriations Act, Congress included a provision that directs the Bush Administration to immediately initiate WTO negotiations to recognize the ability of WTO members to distribute monies collected from antidumping and countervailing duties, and to provide regular reports on such negotiations.

Earlier this year, 25 Republican Senators wrote to Majority Leader Frist urging that the Senate not agree to any provisions that would repeal CDSOA. Prior to that letter, over 70 Senators wrote to President Bush expressing the view that U.S. negotiators needed to re-engage WTO members and to continue to push for maintaining CDSOA. It was the view of these Members that U.S. trade laws are designed to insure a level playing field for U.S. industries and their workers that are being harmed by unfair trade.

As you may recall, the Bush administration stated in late 2002 its position of “[T]he Panel in this case has created obligations that do not exist in the WTO Agreement. The errors committed are serious and many about a statute which, in the end, creates a payment program that is not challenged as a subsidy.”

With this in mind, I urge you to oppose efforts to repeal CDSOA during House-Senate conference negotiations on H.R. 4241 and S. 1932, the spending reconciliation bills.

Thank you for your kind consideration of this request.

Sincerely,

RICK SANTORUM, United States Senate

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

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

The motion to lay on the table was agreed to.

MOTION TO INSTRUCT CONFERENES

Mr. GREGG. Mr. President, what is the regular order?

The PRESIDING OFFICER. (Mr. CHAFEE). There is 2 minutes evenly divided.

Mr. GREGG. Is that on the Kohl proposal?

The PRESIDING OFFICER. That is correct.

Mr. KOHL. Mr. President, I call up my motion, which is at the desk, to reject the $16 billion cut to the child support program which is in the House bill but which is not in the Senate bill. The House built this into a $24 billion in child support payments going uncollected, and it would impact families in every single State. The child support program is a proven success and it has won high praise in the President’s 2006 budget, and I am calling on every dollar invested in the program.

The House conference report is opposed by a wide range of interests, including the National Governors’ Association and the National Conference of State Legislatures. I strongly urge my colleagues to join me in sending a message to the conferees that the Senate will not support cutting benefits for over 17 million children.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. The motion of the Senator from Wisconsin is not binding so I am sure they will vote as they please. It is well-intentioned and I agree with the concept. However, there are issues within the child support questions which should be subject to conference and which, if you read the motion literally and which if it had any binding effect, would undermine our capacity to have flexibility in conference.

Specifically, for example, consider the fact that today, you can use Federal money and make the State match, so what is happening is States are taking Federal money, and instead of using their State dollars to match, they are using Federal money to get more Federal money. That makes no sense at all.

The House has corrected this program. This language would undermine that. I hope we do not support the motion to instruct. The conference will do a good job on this. It does not need this instruction.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. DURBIN. I ask unanimous consent that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ‘yea.’

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

The result was announced—yeas 75, nays 16, as follows:

(Rollcall Vote No. 355 Leg.)

YEAS—75

Akaka                   Rumi                  Murray
Alexander               Feingold                Nelson (FL)
Baucus                   Feinstein               Nelson (NE)
Bayh                     Prieb         Obama
Bennett                  Grassley                Pryor
Baucus                  Binken                 Reed
Burns                  Hatch                Reid
Byrd                      Hutchinson               Roberts
Carper                   Inouye                 Rockefeller
Chafee                  Jeffords                Salazar
Clinton                Johnson                Sarbanes
Coburn                  Kinzinger               Schatz
Coleman                Kerry                  Sessions
Collins                 Kohl                  Shelby
Conrad                   Ky
Coryn                      Landrieu               Smith
Corinne              Lautenberg               Snowe
Corzine            Mike Lee                Specter
Craig                    Levin                  Stevens
Dayton                   Lieberman                Talent
Durbin                   Lincoln                Thune
Durbin                   Lugar                  Voinovich
Durbin                     Mikulski              Warner
Durbin                    Murkowski               Wyden

Mr. President, I call the roll.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. DURBIN. I ask unanimous consent that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ‘yea.’

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

The result was announced—yeas 75, nays 16, as follows:

(Rollcall Vote No. 355 Leg.)

YEAS—75

Akaka                   Rumi                  Murray
Alexander               Feingold                Nelson (FL)
Baucus                   Feinstein               Nelson (NE)
Bayh                     Prieb         Obama
Bennett                  Grassley                Pryor
Baucus                  Binken                 Reed
Burns                  Hatch                Reid
Byrd                      Hutchinson               Roberts
Carper                   Inouye                 Rockefeller
Chafee                  Jeffords                Salazar
Clinton                Johnson                Sarbanes
Coburn                  Kinzinger               Schatz
Coleman                Kerry                  Sessions
Collins                 Kohl                  Shelby
Conrad                   Ky
Coryn                      Landrieu               Smith
Corinne              Lautenberg               Snowe
Corzine            Mike Lee                Specter
Craig                    Levin                  Stevens
Dayton                   Lieberman                Talent
Durbin                   Lincoln                Thune
Durbin                   Lugar                  Voinovich
Durbin                     Mikulski              Warner
Durbin                    Murkowski               Wyden
NAYS—16

COCHRAN—LOTT

DeMINT—Martinez

Ensign—McConnell

Gregg—Sununu

Hagel—Infelso

NOT VOTING—9

Biden—Chambliss—Isakson

Boxer—Dean—Sanford

Burr—Graham—Vitter

The motion was agreed to.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the motion to instruct the committee on Postsecondary Education and Training to report a bill, S. 1039, to limit origination fees for direct student loans. I call on Senator KENNEDY.

Mr. KENNEDY. Mr. President, I will just take 30 seconds because the other 30 seconds will be taken by the chairman of the HELP Committee. All this motion does is insist that the student aid program—which provides $8 billion more for Pell eligible students—that passed out of our committee, virtually unanimously, will be affirmed in the conference. Effectively, we are taking what was the bipartisan agreement in our committee under the leadership of Senator ENZI and instructing the conference to support that position.

Many of our colleagues have voiced their public support for this motion, including Senators DURBIN, HARKIN, DODD, REID, LIEBERMAN, KERRY, REED, CORZINE, CLINTON, and LAUTENBERG.

If you are for American competitiveness in the global economy, you will vote for this motion.

If you are for strong national security, you will vote for this motion.

If you are for opportunity for every American, you will vote for this motion.

I urge my colleagues to join me in doing what is right for American families, especially at Christmas, and send a strong message that students need our help now.

I yield 30 seconds to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I concur with what the Senator from Massachusetts just said. As the body will remember, the Health, Education, Labor, and Pensions Committee had the heaviest lifting in the savings bill, and we met that requirement. We met that requirement while we provided for some grants for both low-income and people who would major in math and science and some special languages.

I would appreciate the support of this body on this instruction. I have been negotiating with the House for 5 full days, and this is one of the issues that is still up. This instruction would help us in that negotiation. I would appreciate the support.

Mr. DURBIN. Mr. President, I rise today to urge my colleagues to support Senator KENNEDY’s motion to instruct conferees. The motion instructs Senate conferees to insist on preserving the Senate provisions that increase need-based financial aid in S. 1039. Forty years ago, President Johnson sought to increase accessibility to education by signing into law the Higher Education Act of 1965. In President Johnson’s words, “To thousands of young men and women, this Act means the path of knowledge is open to all that have the determination to walk it.” A high school graduate in this great land of ours can apply to any college or any university in any of the 50 States and not be turned away because his family is poor.”

Access to higher education has long been recognized as a great American goal. The good news is that the number of students enrolling in institutions of higher education has nearly doubled over the past 35 years—from 8.5 million in 1970 to approximately 16 million in 2005. The bad news is that, despite the importance of a college education in the 21st century, so many millions of young adults never make it to college. Sadly, many fail to make it to college due to financial constraints.

Nearly 40% of the Senate provision played such a critical role in closing the gap between the haves and the have-nots. Over the course of their lifetime, college graduates earn over $1 million more than those without college degrees. In contrast, the Senate fails to seize an opportunity to expand Pell grants and other need-based aid. Instead, the House bill includes provisions that would make college more expensive for families. These provisions include: No. 1, a temporary increase in origination fees for direct loan borrowers; No. 2, repeal of a scheduled reduction in the maximum student loan interest rate—from 8.25 percent to 6.8 percent for students and from 9 percent to 7.9 percent for parents; No. 3, imposing a new 1 percent borrower origination fee that will make it more expensive to consolidate loans; and No. 4, requiring lenders to charge student and parent borrowers a 1 percent insurance fee on student loans.

By insisting on the Senate provisions, we will boost need-based aid and in turn help the United States maintain its competitive edge. But most importantly, we will be a step closer to living up to the promise that President Johnson made to America’s youth 40 years ago: providing access to higher education for those determined to realize the American dream.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. We yield back the remainder of the time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the motion.

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. G OPE), the Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).
Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Ms. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote “aye.”

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

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 356 Leg.]

YEAS—83

Akaka  Dursin  Mikulski
Alexander  Ensign  Murkowski
Allard  East  Murray
Allen  Feingold  Nelson (FL)
Baucus  Feinstein  Nelson (NE)
Bayh  Frist  Obama
Bennett  Grassley  Pryor
Bingaman  Harkin  Reid
Brownback  Hatch  Reid
Bunning  Hutchison  Roberts
Burns  Inhofe  Roberts
Byrd  Jeffords  Snowe
Carper  Johnson  Salazar
Chafee  Kennedy  Sarbanes
Clinton  Kerry  Schumer
Cochrane  Kyl  Shelby
Coleman  Ky  Slee
Collins  Landrieu  Smith
Conrad  Lautenberg  Snowe
Curnyn  Leahy  Specter
Cynthia  Levin  Stabenow
Craig  Lieberman  Stevens
Crapo  Lincoln  Talent
Dayton  Lott  Thomas
DeWine  Logar  Thune
Dole  Martinez  Voinovich
Domenici  McCain  Warner
Dorgan  Moutenod  Wyden

NAYS—8

Bond  DeMint  Inhofe
Burr  Gregg  Sununu
Coehn  Hagel  NOT VOTING—9

Biden  Chambliss  Isakson
Boxer  Dodd  Santorum
Cantwell  Graham  Vitter

The motion was agreed to. Mr. GREGG. I move to reconsider the vote, yeas 83, nays 8.

Mr. STEVENS. I move to lay that motion on the table. The motion to lay on the table was agreed to.

MOTION TO INSTRUCT CONFEREES

The PRESIDING OFFICER. Under the previous order, there is 2 minutes equally divided on the Reed motion to instruct conferees. The Senator from Rhode Island.

Mr. REED. Mr. President, I offer this motion along with my colleague, Senator COLLINS from Maine, I will shortly yield to her the last 30 seconds. I also offer it on behalf of myself and other Senators, including Senator LUTENBERG.

The reality is very clear to so many poor families in this country. Energy prices are rising, temperatures are falling, and they are going to be in a very vulnerable and very disadvantaged position. This amendment would add $2.9 billion in additional funding for LIHEAP. It would bring it up to the authorized level of $5.1 billion.

We have considered this proposal in various procedures means four times. A majority of the Senate has always supported it. I hope it continues to do so. I yield my remaining time to Senator COLLINS.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I urge my colleagues to support this motion to instruct the conferees to add $2.9 billion for the LIHEAP program. The time is growing late. In northern Maine, the high temperature earlier this week—the high temperature—was 12 degrees. Let’s act now to avert a real crisis for low-income families across this country.

Ms. SNOWE. Mr. President, I rise today for one very simple reason—ask for the support of my colleagues for the Reed-Collins-Kennedy-Snowe motion to instruct the conferees to S. 1932, to add $2.92 billion for the Low Income Home Energy Assistance Program, or LIHEAP. This funding, along with the expected $1.8 billion in fiscal year 2006 appropriations, will confirm the commitment we made just this past July and bring LIHEAP up to the level of $5.1 billion we authorized in the 2005 Energy bill.

In the Nation’s colder States such as Maine, the days are relentlessly marching toward winter, the clock is ticking as the thermometer edges ever downward and it would be unconscionable for Congress to adjourn for the year without providing critical, additional assistance to those in need. As the LIHEAP at 72 a gallon, home heating oil prices have been predicted to increase by up to 44 percent this coming winter.

There should be no mistake—this is an emergency and a crisis that is no longer an impending crisis as I have been saying for months—it is now here. I feel very strongly that it would be an abrogation of our responsibility to stand by and allow more and more of our elderly on fixed incomes and low-income people, includingable to stay warm, to suffer because of a lack of heat.

This past week, it was reported to one of my Maine offices that two elderly people—who have already used up their entire LIHEAP allotment for a winter that has not yet officially arrived—were admitted to the hospital with hypothermia. In one of the households, the residence was so cold the water in the toilet bowl was frozen. It has been said that a society is judged by how it treats its vulnerable citizens. What a failing grade we would receive $480, which covered the cost of 275 gallons of heating oil.

The problem this winter is that the same $480 would buy only 172 gallons, which a household will use up in the first 3 to 4 weeks in Maine. What will these people do to make ends meet for the four or five months left of winter? The water pipes will freeze and then break, damaging homes. People will start using their stoves to get heat. The Mortgage Bankers Association expects that the steep energy costs could increase the number of missed payments and lost homes beginning later this year. My State is anticipating at least 48,000 applicants this winter, so there will be less money distributed to each household unless we can obtain higher funding for the LIHEAP program.

Ms. Chaoate says that Maine plans to focus on the elderly, disabled, and families with small children, and is studying how to move others to heated shelters. This is why our efforts are so very important. And it isn’t just Maine. It is happening in all of the Nation’s cold weather States. Quite simply, without increased funding, we are forcing the managers of State LIHEAP programs to make a Solomon’s choice as to who gets served.

The facts are that LIHEAP is projected to help 5 million households nationwide this winter. But that is only
about one-sixth of households across the country that actually can qualify for the assistance. So this is a perennia


tional fight we wage even when prices aren't as high as today. And now, that battle becomes all the more pivotal.

I thank Senators Reed and Collins for their leadership on this motion to instruct the conferees for increased LIHEAP funding, and I am proud to stand shoulder to shoulder with them to secure what is, in essence, literally life-or-death funding for our most vulnerable Americans. The cold weather won't—and neither should we when it comes to helping citizens survive through the coming winter.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. Gregg. Mr. President, let's remember what this amendment does in the context of the LIHEAP issue. This amendment will add $2.9 billion to the national debt and pass that debt on to our children in order to pay for energy costs which are being incurred today.

The correct way to do this is the way we proposed in the Senate, as Republicans, which is to pay for it. That is what we will do in the conference. There is already $1 billion additional money for LIHEAP in the conference, and it will probably go up. The difference between those dollars and what is being proposed in this amendment is what we actually pay for it.

It is inappropriate to go to this number, which is a 130-percent increase in the LIHEAP program, when spending on oil is estimated to go up by 28 to 30 percent or maybe even 40 percent. Increasing the program by 130 percent when the oil costs are going up 30 to 40 percent is inconsistent on its face.

It is especially inconsistent when one is taking that bill and giving it to one's children and their children's children so they end up paying for today's oil costs rather than their oil costs 2 or 3 years from today or two or three generations.

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

The yeas and nays were previously ordered.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McConnell. The following Senators are necessarily absent: The Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. Durbin. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. Dodd) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. Boxer) would vote 'aye.'

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

The result was announced—yeas 63, nays 28, as follows:

[Rollcall Vote No. 357 Long.]

The yeas were:—

Yeas—63

Alabama, Feingold, Feinstei

Alaska, Feingold, Feinstei

Arizona, Beggs, Begs

Arkansas, Byrd, Byrd

California, Carper, Kennedy

Colorado, Colman, Landrieu

Connecticut, Blumenthal, Lieberman

Delaware, Burton, Lugar

Georgia, Saxby Chambliss, Lugar, Lugar

Hawaii, M. Boxer

Idaho, D. Bayh

Illinois, Durbin, Durbin

Indiana, Donnelly

Iowa, Harkin

Kansas, Reid, Reid

Kentucky, Philosophy, Philosophy

Louisiana,吸,吸

Maine, Olympia Snowe

Maryland, Romanoff, Romanoff

Massachusetts, Menino, Menino

Michigan, Leahy, Leahy

Minnesota, Franken, Franken

Mississippi, Stennis, Stennis

Missouri, McCaskill, McCaskill

Montana, Stevens, Stevens

Nebraska, Specter, Specter

Nevada, Begos, Begos

New Hampshire, Gregg, Gregg

New Jersey, Menendez, Menendez

New Mexico, Bennett, Bennett

New York, Santorum, Santorum

North Carolina, Johnson, Johnson

North Dakota, Bunning, Bunning

Ohio, Brown, Brown

Oklahoma, Coburn, Coburn

Oregon, Wyden, Wyden

Pennsylvania, Specter, Specter

Rhode Island, Shaheen, Shaheen

South Carolina, Graham, Graham

South Dakota, Johnson, Johnson

Tennessee, Voinovich, Voinovich

Texas, Vitter, Vitter

Utah, Bennett, Bennett

Vermont, Leahy, Leahy

Virginia, Warner, Warner

Washington, Boxer, Boxer

West Virginia, Rockefeller, Rockefeller

Wisconsin, Bayh, Bayh

Wyoming, Enzi, Enzi

NAYS—28

Alexander, Coe

Allard, DeMint

Allen, Ensign

Bennett, Enzi

Baucus, Frist

Brownback, Gregg

Browning, Hutto

Coburn, Hatch

Cornyn, Inhofe

Cox, Boxer

Cantwell, Graham


denominating a vote from Massachusetts be recognized at this point for 10 minutes, and after the Senator from Massachusetts has completed his time, the majority leader be recognized.

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

The Senator from Massachusetts.

Mr. KERRY. Mr. President, obviously somewhere in the next few days—we don't know when yet—we are going to be wrapping up our business here, and that will mark the end of the first session of the 109th Congress. Before we leave, Members on both sides of the aisle are very concerned that we will not help provide the assistance to the small businesses in the Gulf States region that they desperately need in order to recover from the effects of Hurricanes Katrina and Rita.

The effect is that literally hundreds of thousands of small businesses are in desperate need of assistance throughout that region. Without the jobs those small businesses provide, the economy of the Gulf coast is going to have a much harder time coming back.

Since Hurricanes Katrina and Rita hit the gulf coast, regrettably—this has been commented on again by Senators on both sides of the aisle; it is not a partisan issue—there has been a stunningly slow response by the Administration to provide relief to small businesses.

The administration has now sent up three pieces of emergency legislation—three supplemental emergency spending bills worth more than $62 billion—and yet we have not adopted any direct relief for small businesses.

The latest supplemental request asks for $471 million in additional funding for SBA disaster loans and the SBA Inspector General. But, frankly, giving more money to the disaster loan program doesn't address small business needs. It's too narrow in scope and is not delivering relief with urgency.

Senator Lott has talked about the problems—Senator Cochran has too—and there is a recognition that you have a lot of small businesses that can't wait till their disaster loans are processed or disbursed. They need access to capital immediately.

It is a matter of record now, commented on in many national journals, that the SBA has done a completely inadequate job—abysmal may be a better word—of getting disaster loan funds into the hands of small businesses in the Gulf region.

It is not because of the lack of funds or the lack of employees. The SBA has enough funding to grant $1.4 billion in disaster loans, and $249 million for administration and staff. The staffing has been increased by some 800 employees to 4,000 employees.

As of Monday of this week, almost 39,000 small businesses had applied for
SBA disaster loans. Yet with all of these resources, both personnel and money, only 9,200 loans have been actually processed, which is 25 percent, and only 2,600, which is 7 percent, had actually been approved. Only 240 had actually seen a disbursement of money.

In the immediate aftermath of the storm, their small but successful podiatry office based out of New Orleans was deluged with 5 feet of water. With their savings all but gone, and the ever-shrinking list of patients, all of whom have been displaced by the storm, the Langs are in dire need of assistance there. They want to rebuild their business there. It is essential to New Orleans that people make that choice are empowered to be able to do so.

Despite repeated offers from out-of-state friends urging by their plan to try to rebuild in the city they love and the place they want to work. But the cold shoulder they received from the SBA is a virtual death sentence for their livelihood. They are just one example of countless other gulf coast businesses that have been ignored by the very governmental agencies that exist to serve them. On its face, that is unacceptable.

The request that has been put forward by the Small Business Committee for $270 million—less than 1 percent of the $62 billion the administration has requested for Katrina relief. This legislation is a very small cost compared to the total amount of money the Government is putting in, but an enormous return for the small businesses that need it.

Once again, we are seeing a situation where big business is able to walk away with most of the funding while the vast majority of the job base is in small businesses. We are not getting the assistance they need.

What our bill does is to authorize $450 million for the impacted States to provide immediate assistance to small businesses struggling to get on their feet. It authorizes additional funding for SBA’s partners—such as the small business development centers that are out in the field trying to provide business counseling to the many people and to the owners who are trying to determine what to do next.

There are too many businesses on the verge of bankruptcy in the hurricanes’ wake. Since the goal shared in a bipartisan way by all of the Senate and the House is to try to get those businesses to be leveraged as best as possible, to be able to return as soon as possible, and each small business that returns helps the other small businesses to be able to return, all of those things will make a difference. Tax breaks will help, but an emergency tax break is not enough because tax breaks do not make an impact until you file your taxes. They have nothing to do with the assistance one needs now to be able to have cash in the pocket, to be able to survive the gap. Small businesses need that additional relief, access to capital, immediate and longer-term.

Our bill also addresses the Administration’s failure to contract with small businesses to rebuild the region. The New York Times reported more than 80 percent of FEMA contracts alone were awarded on the no-bid limited competition basis. This bill we have introduced—Senator Snowe, myself, and other members of the committee—encourages greater competition by implementing a 30-percent goal for prime contracts and a 40-percent subcontracting goal. With billions of dollars being allocated to relief and reconstruction, it is important that we have fair competition.

We need to ensure that America’s small businesses are not left behind.

The citizens of the gulf region are courageously and desperately trying to rebuild their communities. The empty promises of several weeks ago, “we will do what it takes, we will stay as long as it takes,” are ringing in their ears. Frankly, they are wondering where the actions are to back that up. According to Mike Allen of Time magazine, one Presidential adviser is quoted as saying recently: "Katrina has fallen so far off the radar screen you can’t even find it.

We need to find it. We need to put small businesses back on the radar screen. We need to follow through on the commitments to the victims of these devastating hurricanes. We need to ensure that we do not leave the citizens of the Gulf States behind.

There is bipartisan support to do this. The Senate passed this legislation previously. My hope is before we decide to go home, we will do what is necessary for the citizens who have been so badly impacted in the Gulf State region to get the relief they have told us they need.

I yield back the remainder of my time.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT REQUEST—H.R. 2520

Mr. FRIST. Mr. President, over the next few moments I will be addressing an issue that affects potentially thousands of people today who are without therapy or who have debilitating diseases, and then begin a brief discussion on what is called the embryonic bill.

The bill, broadly supported in a bipartisan way, has widespread support in the Senate, as well as in the House of Representatives.

As my colleagues know, we plan to take up and debate the policy and issues related to Federal support and oversight for embryonic stem cell research early next year.

And I look forward to what I know will be a full debate on the science and ethics surrounding this important research.

Today, I ask consent to move forward with bipartisan legislation to encourage a technology that is producing cures and lives now.

This legislation is needed now.

Every day, patients young and old die waiting for transplants of hematopoietic cells because they can’t find a suitable match. Diseases like leukemia, sickle cell anemia, and as many as 70 other blood and genetic diseases have been helped or cured by cord blood transplants.
Cord blood is a healthy byproduct of normal pregnancies, and is harvested from the placenta after the baby is safely delivered.

The placental byproducts yield blood cells that are genetically immature, but have the remarkable ability to help repair injuries in individuals with diseases that traditionally have only helped through bone marrow transplants.

This bill provides for the creation of a public inventory of 150,000 units of cord blood estimated to provide well matched transplants for 80–90 percent of the population in need.

African American patients have the disease and few have been cured of the disease. Although this is important technology, cord blood transplants may provide an alternative that has already shown to be faster, safer, and potentially reach a larger group of patients with traditional bone marrow transplants.

Because the cells are initially less mature and more pliable there is less chance of rejection, and therefore fewer complications.

In fact, over 7,000 cord blood transplants have been successfully done here in this country, and around the world.

Leukemia is a devastating blood disease that has been treated by traditional bone marrow transplants. Unfortunately, although there is a large group of potential bone marrow donors in the United States and Europe, testing, harvesting and transplanting bone marrow cells can take often months, with less dependable success.

Although this is important technology, cord blood transplants may provide an alternative that has already shown to be faster, safer, and potentially reach a larger group of patients affected by leukemia.

Nonmalignant blood conditions such as Sickle cell and Fanconi’s anemia are also devastating to those affected by the disease.

Sickle cell anemia affects as many as 50,000 African Americans, while many more are carriers of the disease. Although very few unrelated cord blood transplants have occurred, the success has been staggering—Sickle cell anemia can be cured.

Krabbe’s disease is a genetic disease that affects only 1 in 100,000, but as many as 1 in 125 Americans are carriers of the genetic deficiency.

To date more than a dozen patients have had a cord blood transplant and have been cured of the disease.

Passage of this bill is especially important for minorities. For example, African American patients have the lowest success rate in getting a transplant from an unrelated bone marrow donor.

A long time member of my staff, Cornell Wedge, experienced this first hand. His brother, Robert Wedge Sr., was diagnosed with leukemia and in spite of sibling typing and numerous bone marrow drives aimed at increasing minority donation, his brother passed away still waiting for a match.

While tragic, this is not uncommon.
amplified for cures that may occur 5 or 10 years down the road.

The reason I feel strongly, since there is probably unanimous consent on the substance of this bill, that we should move ahead is that we can benefit people today except for diseases such as Parkinson's, diabetes, cystic fibrosis, because of diseases such as a whole range of leukemias, childhood leukemia especially, where cord blood is so particularly powerful, diseases such as Krabbes, a pretty rare disease for which there is no treatment, bone marrow transplant is the therapy that is applied in terms of cord blood. The reason I think we can justify, and should justify, separating these bills is that we all agree on the substance. It is a good bill. The leadership of Senator HARKIN and Senator SPECTER have brought us to the point that funding has begun. But now is the time to make this registry available nationwide.

The one problem with cord blood today is that it is powerful. It is more powerful than a regular bone marrow transplant, but the quantity that you get out of the placental byproducts has to be accumulated. You need to accumulate it from several different sources, and you have to have a degree of genetic matching. Therefore, the only way to take advantage of it is to have a national registry where you can go to a computer and see where it is all over the country. Then you pull it together to treat a child who is dying of leukemia today. Therefore, action on this bill will save lives, literally.

We always exaggerate. A lot of people exaggerate the politics about saving lives in a lot of legislation we do. But I do believe that by establishing the registry and the communications network, which has not been done in spite of the funding, we can have a dramatic impact.

Since we have the House bill, we have the bill that we are requesting today, and I have assurances that the House will deal with it before we leave in the next 48 hours, we literally can pass a bill that we all agree upon.

There are a number of other bills. One is the embryonic stem cell bill. But there is an alternative therapy bill. There are a whole range of bills that are very important that we need to take up that are going to take several days on the floor to look at ethical and scientific issues. We are committed to doing that in the early part of the year. This is an important topic, and that is why I will object to the modification because I believe the embryonic stem cell does deserve more thought than we can possibly give it in the next 48 hours.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the majority leader?

The Senator from Kansas.

Mr. SPECTER. Reserving the right to object, I want to enter into this discussion. I deeply appreciate the majority leader bringing the issue up. I appreciate the comments of my colleague from Iowa. He and I have been around this debate for some time. I personally want to bring up a human cloning ban. That is something I have had in the mill for 4 years. Each session we are getting close. I think it ought to be right now and moved forward. Yet I recognize it has some contentiousness to it, as does my colleague from Iowa raising the embryonic stem cell issue. It has a contentious debate on it. I have objections, as a number of my colleagues have, to the use of young human life for research purposes.

The reason that we should go forward with this type of proposal the leader is putting forward is there is nobody opposed to cord blood research in the entire 100 Members here. Everybody supports cord blood research. It is real cures today. I have two pictures of people who are being treated right now, have been treated. This is Keone, sickle cell anemia, all another cured. Another one, the next one, Krabbes disease, 3-year-old, cured, cord blood. The problem is, we don’t have a big registry of it around the country. So it is a real hit and miss. Some people are lucky enough to find it; others don’t and die today.

With embryonic stem cell research, the researchers who are the most supportive of it are looking at decades before we have cures. We are researching on it today.

We can cure more kids such as Erik Haines today or more will die if we don’t take up what the majority leader is asking for us to do, a bill for which there is unanimous support. There is not a single person who does not support a cord blood registry and getting the banking of it up so more people can live today.

So I hope my colleagues will look at this and say they don’t object. The Senator from Iowa supports the bill; he is one of the sponsors. Let’s let this one through, and next year I would love to have a debate on embryonic stem cell research. I would love to debate that and have a debate about cloning. Let’s do that and let’s have this robust discussion where we don’t have agreement.

But here we can save lives today. I am not going to object. I would, though, ask that the majority leader’s proffer be accepted so we can save some lives. The next one, cord blood cured. Another example is Keone, sickle cell anemia, cord blood cured. Another person waiting for transplant today is that with these cord blood transplants, outcome is better than bone marrow—people usually have to wait months, but this is the sort of thing where once you have the registry you wait not months but days to get the transplant.

One last point is that with these cord blood transplants, outcome is better...
Mr. HATCH. Mr. President, I am disappointed that we have heard this objection tonight.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I echo the disappointment of the leader and will make a couple comments on the debate we have already had. I know it is not in the leader's power to bring up a bill that is unamendable. It is possible for the leader and the leader has made speeches in support of having the embryonic stem cell—to bring up a bill, but when it comes before the body, it can be amended any number of ways. So it is not possible for any leader to be able to give the guarantee that has been asked for today.

Another important part of this debate is that we don't just have the 100 Senators in this body agreeing that this is important, necessary, and immediate legislation; we also have the House agreeing that this is important, necessary, and immediate legislation. This is a case where saving lives now. This isn't a big thing to go into the research area. This is treatment that is readily available.

We have preconferenced this bill already with the House, so it is not a matter of debate or discord between the House and the Senate. I am noticing at this time of the year that there is quite bit of that. There are more fights between the House and Senate than between the Republicans and Democrats. I hope we can get all of the debate resolved that we have before us. This is one that ought to only take a few minutes, and it could be done yet today and to the President for signature tomorrow because of the preconference work we have done. That is unusual for a bill. If any one of the stem cell bills were able to be even unanimous consented within this body, we would be able to take it up as we have a number of bills, such as the pension bill, which was not easy. To have one come up with absolutely an up-down vote isn't going to happen around here.

I know we were looking forward to the debate. We expected it. Then a little thing happened. I urge my colleagues not to hold up this critical legislation right now. Like others, I do think that it is important for us to discuss the broader issues of stem cells on the Senate floor. However, it is neither the time nor the place for such a debate. But we can help people now by passing this legislation which has broad bipartisan support. You can't get more bipartisan than 100 percent. So I urge my colleagues not to hold up this critical legislation until that other debate. But we can help people now by passing this legislation which has broad bipartisan support. You can't get more bipartisan than 100 percent. So I urge my colleagues not to hold up this critical legislation until that other debate.

Additionally, this critical bill requires the Food and Drug Administration to provide a report on its progress in developing licensure requirements for cord blood units, given that such requirements will help improve the quality of units provided to patients nationwide.

Finally, I wish to mention a new outcomes database included within the legislation which provides the opportunity for the Health Resources and Services Administration and other researchers to determine the clinical benefit of a variety of these therapeutic products, including bone marrow and cord blood.

All of these critical changes will help improve the quality of care for patients receiving bone marrow and cord blood.

This week, I read about a little boy who benefited from a cord blood transplant. This little boy was born in December 1999.

Mr. HARKIN. Mr. President, regular order.

The PRESIDING OFFICER (Mr. CHAFEE). Regular order has been called for. Does the Senator object?

Mr. HARKIN. Mr. President, I object. The PRESIDING OFFICER. Objection is heard. The Senator from Wyoming.

Mr. ENZI. Mr. President, thank you for the opportunity to continue. I know there are others who want to speak on this briefly, too, that I need to use this boy who was born in December 1999. At age 1, he was diagnosed with a disease causing progressive damage to the brain and adrenal glands. Left untreated, it would lead to his eventual death. For this little boy, there are others who want to speak on this briefly, too, that I need to use this boy who was born in December 1999. At age 1, he was diagnosed with a disease causing progressive damage to the brain and adrenal glands. Left untreated, it would lead to his eventual death. For this little boy, there are others who want to speak on this briefly, too, that I need to use this boy who was born in December 1999. At age 1, he was diagnosed with a disease causing progressive damage to the brain and adrenal glands. Left untreated, it would lead to his eventual death. For this little boy, there are others who want to speak on this briefly, too, that I need to use this boy who was born in December 1999. At age 1, he was diagnosed with a disease causing progressive damage to the brain and adrenal glands. Left untreated, it would lead to his eventual death. For this little boy, there are others who want to speak on this briefly, too, that I need to use this boy who was born in December 1999. At age 1, he was diagnosed with a disease causing progressive damage to the brain and adrenal glands. Left untreated, it would lead to his eventual death.

When he was just 2 years old, because of the disease progression, he received a cord blood transplant. Two years post-transplant, he is doing extremely well. He is a healthy, normal little boy. If you met him, you never would guess what he had been through and what awaited him without this transplant.

It is for this little boy and others that we are focusing on this critical legislation right now. Like others, I do think that it is important for us to discuss the broader issues of stem cells on the Senate floor. However, it is neither the time nor the place for such a debate. But we can help people now by passing this legislation which has broad bipartisan support. You can't get more bipartisan than 100 percent. So I urge my colleagues not to hold up this critical legislation until that other debate. But we can help people now by passing this legislation which has broad bipartisan support. You can't get more bipartisan than 100 percent. So I urge my colleagues not to hold up this critical legislation until that other debate. But we can help people now by passing this legislation which has broad bipartisan support. You can't get more bipartisan than 100 percent. So I urge my colleagues not to hold up this critical legislation until that other debate.
I mention to my colleague from Iowa that the majority leader, even though he was against embryonic stem cell research, has had the courage to come out for it. Upon reflection and study, he has as great a desire to pass embryonic stem cell research as I do. So when he testifies that it is not being able to help the living with these tremendous maladies we have, it may be the final answer to health care costs as well. But we have to start now.

There are a lot of people who suffer from serious diseases and serious illnesses. I do not know one person in this whole body who is against it. Not one. I don’t know one person in the House of Representatives who is against it. Not one. And by the way, we have preconferred this bill. It is very difficult to preconference bills. But virtually everybody realizes that if we can pass the cord blood bill, we will go way down the road of being able to help people with these serious problems, especially these young children, and do it virtually everywhere. This is for cord blood research. I believe we should give unanimous consent to immediately call up and adopt H.R. 2520, the Stem Cell Therapeutic and Research Act. We should pass this bill immediately. Patients cannot afford to wait until next year. There are thousands, if not millions, of people who could benefit from this research if we get it going with Federal help at this time. A bill like this will facilitate the rapid matching of donors and recipients, and quickly make such cells available for transplant centers for stem cell transplantation. The establishment of the national infrastructure for transplant material will help save the lives of many critically ill Americans.

We need to be sure that our Nation can meet the needs of patients and physicians by providing a strong future for both bone marrow and cord blood transplantation in this country.

My personal goal is to ensure that the amount of transplant material available for patient care and research increases in the coming years. The only way that goal may be accomplished is through strong Federal support. It is the only way.

I look forward to working with my colleagues and doing everything possible to increase transplant patient care and with the best possible options by ensuring a strong future for bone marrow and cord blood transplantation in this country.

Mr. President, this is a good bill. I hope my colleague from Iowa will think this over because this puts us down the road of being able to get on top of some of the most innovative and important and remarkable health care processes this country and any country has ever seen.

If we do not pass this bill in this timeframe and it gets mixed up in the whole panoply of embryonic stem cell research, it could take at least another year, maybe 2 years, before we get even one cord blood stem cell registry. Why should patients have to wait another year or 2 for such a life-saving bill to pass the Congress?

There are many illnesses where cord blood transplantation and research have already made the difference in people’s lives.

I think I have made my point, and I urge my colleagues to pass this bill as quickly as possible.

It is apparent we are not going to be able to do the cord blood research because of objection, but I hope that my colleagues will reconsider and allow this to happen before the week is out. I know my colleague from Iowa is very sincere. He has been one of the leaders on stem cell research in this country, and he certainly has a right to do whatever he wants, but I am thinking of the thousands, if not millions, of people who could benefit from this research if we get it going with Federal Government help at this time.

Mr. Hatch. Mr. President, I rise today in strong support of the USA PATRIOT Improvement and Reauthorization Act. This bill gives our national security and law enforcement communities, including the FBI, the tools they need to fight the war against terrorism, while at the same time adding new provisions to protect the civil liberties and privacy that all Americans rightfully expect and cherish.

One and only one purpose of our national government is to protect the citizens of our country from foreign threats.

My fellow citizens of Utah and all of my fellow Americans expect that the Federal Government will help protect them against terrorist attacks but to do so in a fashion that does not open the lives of ordinary, law-abiding Americans to unjustified government intrusion. The PATRIOT Act protects our citizens by helping to keep us physically safe and protects our essential civil liberties.

The PATRIOT Act Conference report before us makes permanent 14 of the 16 expiring provisions of the PATRIOT Act, all of which have proven extremely useful over the last 4 years in preventing and prosecuting terrorism. Sometimes lost in the often charged political debate over the PATRIOT Act is the fact that there is broad, in fact almost universal, political consensus that every one of the major elements of the PATRIOT Act is essential to protecting the American public.

One hard and true measure of this reality is that there is agreement that 14 of the 16 expiring provisions in the PATRIOT Act ought to be made permanent. That is what this bill does. Another measure is that no major component of the PATRIOT Act is being repealed nor, to my knowledge, is anyone making any serious effort to repeal any major component of the PATRIOT Act. There is a simple reason for this simple fact. Overall, the PATRIOT Act is operating well and has not been abused. The PATRIOT Act is necessary to help protect the American public from terrorists.

The bill before us renews, for a 4-year period, the remaining 2 of the 16 expiring provisions of the PATRIOT Act that are not made permanent in this bill. Frankly, many of us think that these two provisions, section 206—the roving wiretaps, and section 215—the business records section, also ought to be made permanent. I know of no serious expert in counterterrorism or law enforcement who is calling for the repeal of either of these two important provisions or who believes that they will not be renewed again in 4 years. The fact is that the main reason that these two provisions have not been made permanent is not because they are fundamentally deficient. The reason is that there is an understandable concern shared by virtually everyone that there ought to be vigilant congressional oversight in the area of terrorism. This has been preserved in the PATRIOT Act specifically. Adopting these two sunset provision merely ensures that Congress will do what it is doing already—conducting consistent
and careful oversight of the PATRIOT Act.

I welcome this scrutiny and debate. We need to stay on top of how this important counterterrorism law is being implemented and enforced. We need, as we have done in this bill, make any necessary amendments that will improve the PATRIOT Act. I think the record is clear that Congress has not shirked its duty when it comes to conducting vigorous oversight of the PATRIOT Act. I understand that this year alone, we have held some 23 hearings on various elements of the PATRIOT Act and that Department of Justice officials have testified at 18 of these hearings.

The Senate Judiciary Committee has held literally dozens of hearings on elements of the PATRIOT Act since it passed it 2001. During the 108th Congress, when I chaired the Judiciary Committee, we held some 30 hearings that touched on aspects of the PATRIOT Act.

Under Senator SPECTER’s capable leadership, the Judiciary Committee held an additional series of more than a half dozen hearings this year that focused on the PATRIOT Act and that did not even count confirmation hearings for senior Department of Justice officials, such as the Attorney General, at which there have been a substantial number of questions related to the PATRIOT Act.

This committee has held a series of hearings on the PATRIOT Act.

We have heard from all the major critics of the PATRIOT Act. I think that the bill before us today shows that we have listened to, and where appropriate, have responded to the legitimate concerns of the critics. Frankly, in a number of areas I think we have bent over backwards to address concerns that were more hypothetical than real. To put a point on it, as Attorney General Gonzales says in his Washington Post op-ed published yesterday:

During this important debate, Republicans and Democrats have discovered that concerns raised about the PATRIOT Act’s impact on civil liberties, while sincere, were unfounded. There have been no verifiable civil liberties abuses in the 4 years of the PATRIOT Act’s existence.

That is a good record by any measure. As with any complex piece of legislation, we should not be surprised that if one day some administrative official, intentionally or otherwise, does abuse their discretion under the statute. Unfortunately, that is only human nature. But some provisions of the law in an abusive fashion, it does not follow that the law needs to be repealed.

I think it is a testament to the professionalism to the men and women of the FBI—led by its able Director Bob Mueller—law enforcement agencies that, to date, there have been no documented cases of PATRIOT Act abuse. Let me just say that many critics of the act have tried their best to make the facts match their critiques but have failed to marshal any definitive evidence.

We should all understand that the chief reason for the bill’s inclusion of a wiretap provision is our willingness that the emergency provisions acts chiefly as a belt and suspenders approach to help ensure that Congress will continue our extremely active oversight of the PATRIOT Act. In fact, the House bill contained a 10-year sunset provision for the two provisions that will not be made permanent.

While it would have been possible to compromise somewhere between the 4-year Senate renewal time period and the 10-year House sunset period, the conference report—which no Democrat signed—contained the lower Senate number of 4 years.

It always leaves you a little empty when you make a major compromise and your colleagues pushing for particular provisions do not budge on the compromise package. Whatever happened to compromise around here? The PATRIOT Act reauthorization has been through several drafts as the conference process has taken place. I do not necessarily support every change that always happens, but I believed that compromise is part of the process of legislation.

I think that a fair reading of the record reveals that in the grand scheme of things the issues that have generated the most disagreement on the PATRIOT Act are relatively minor issues. No one is talking about repealing any major part of the PATRIOT Act although some of the outside groups would have you believe that the PATRIOT Act is somehow un-American and a threat to civil liberties.

Hogwash. I support the efforts of our law enforcement and intelligence officials in combating terrorism. They continue to fight terrorists who would wreak havoc and death on America. It seems to me, and many others, that we should at least give law enforcement the same tools to investigate and stop terrorists that we give to combat mail fraud and internet pornography and organized crime. Now that the shock and pain of 9/11 has begun to fade, I hope we do not go backwards in our efforts to prevent terrorism. We should not make it tougher for our law enforcement and intelligence officials to fight and share information critical to investigate terrorists than we allow for common criminals.

Let me specifically address four provisions of the PATRIOT Act that are often misunderstood at best, and sometimes outright misrepresented by many in this debate. First, section 209—a wiretap provision that the targets of terrorism would have you believe that the act somehow gives the FBI carte blanche to eavesdrop on conversations when the interests of justice dictate that we need to know the best chance to understand who was on the right side in that moment so we can stop or catch the most senior members of a terrorist cell and to give us the best chance to understand who is involved, and what they are plotting to do against us.

Let me repeat again. Under this bill, delayed notification warrants always require a judge to find that delayed notification is justified.

And what was the big flap over this greatly debated provision? May the record show that this is an un-American trampling of rights. No, the debate among conference...
was whether the initial period for the duration of this special type of search warrant would be 7 days, which was in the Senate bill, or 180 days, which was in the House bill.

Stop the presses, the conference report contained un-shocking, 30-day compromise time period. And more important than the presumptive 30-day period contained in the final bill is the fact that a judge can effectively make the 30 days either shorter or longer depending on the facts and circumstances of the application before the court.

The bill permits extensions of the delay period, but only upon an updated showing of the need for further delay. Also, it limits any extensions to 90 days or less, unless the facts of the case justify a longer delay. Moreover, the bill also adds new public reporting on the use of delayed notice warrants.

Despite all of the exaggerated hoopla over the so-called sneak and peek provision, I am aware of no member of Congress that has taken the position that delayed notification search warrants should be eliminated and I am certain that no information that this provision has ever been abused in the relatively few times it has been exercised under the PATRIOT Act during the last 4 years.

If it is constitutional and effective to use delayed notification warrants against drug dealers and child pornographers—which it is—I am all for using this tool against suspected terrorists—and that is what this bill continues to allow.

I doubt many Americans would be for a policy that would mandate that the FBI to knock on the door and tell every suspected member of al-Qaeda that,

Hi, we are here from the FBI and we would like to see if you are making a dirty bomb in your basement and please don’t tell your housemates and associates that we have been here.

Delayed notification warrants are here to stay and will and should be used when circumstances justify as determined by a judge.

Third, section 215. Section 215 is often misleadingly called by its critics as the library records provision. Given the great amount of discussion this provision has engendered, I would like to first note for the record that before this authorization bill that the word library was nowhere to be found in this provision.

I love libraries. I love books. I have nothing but the greatest respect for librarians and patrons of libraries. Nobody in Congress would ever sit by and allow the Federal Government to undertake conditions to find out who is reading what in libraries.

At the same time, I do not think anyone wants libraries to become safe havens for terrorist research and other terrorist activities such as electronic mail communications with computers paid for by American taxpayers.

Under the new compromise bill, the law for the first time now does refer to libraries—but only in the most bend over backward sense that it allows a very limited, select group of senior government officials, consisting of the FBI Director, the Deputy FBI Director and the Executive Assistant Director for National Security to authorize the FBI to seek a court order under the Foreign Intelligence Surveillance Act for relevant library, book sales, fire-arms sales, tax return, educational or medical records.

This authority may not be further delegated to anyone else in the FBI. Obviously, this was a compromise that was made in response to the great concerns that many voiced about library and other sensitive personal records. I can live with this compromise but since there was not one documented case of abuse of this provision under existing law, I just hope we have not unintentionally created a bottleneck in the system by requiring the personal involvement of the senior-most FBI officials when circumstances might need to act as quick as possible.

There is a good argument to allow this authority to be delegated down further. I, for one, am uncertain why each of our 78 Senate-confirmed U.S. attorneys and each of the 56 career FBI Special Agents-in-Charge of local FBI Field Offices should not have this discretion. We entrust them with broad responsibility to protect us from a wide range of crimes each and every day and there seems no reason why they should not trust them to recommend which applications for business records should be brought before a judge.

I would remind my colleagues that one of the ways the Unibomber, Ted Kaczynski, was caught was through a garden-variety search of library records. I am aware of no complaints that the Unibomber was apprehended and I hope that no one takes the position that illicit use of libraries such as the Unibomber sought is irrelevant because that, by the way, Mr. Kaczynski, the FBI was in last week comparing your withdrawal records with the Unibomber’s written Manifesto and we thought you would be interested that they were asking about where you lived.

Section 215, the business records section allows the FBI to seek court orders—and let me repeat that—to seek court orders—to obtain business records from third parties in intelligence and terrorism cases.

The revisions in the law requires applications for orders for business records to include a statement of facts showing reasonable grounds to believe that the things sought are relevant to an authorized investigation to protect against terrorism or espionage.

Prior to this change there was no explicit relevance standard. Because of concerns that were raised, the relevance standard has now been codified. The administration supported this change. I support this change. Some, including my friend from New Hampshire, Senator SUNUNU, claim that the relevance standard contained in the bill is too broad.

Let us put this issue in perspective. The relevance standard has been used for years in the issuance of grand jury subpoenas. All across the country, dozens of these subpoenas are issued under this broad relevance standard each and every day. For example, grand jury investigations routinely are conducted in conjunction with records—business records relevant to the case at hand.

As a matter of fact, in many criminal law contexts, including health care fraud and sexual exploitation cases, federal investigators—without prior judicial review—can issue what are called administrative subpoenas for relevant documents.

I believe that there are over 300 Federal statutes that contain the type administrative subpoena authority that is not included in either the current PATRIOT Act or in the reauthorization bill.

In some ways it is more difficult for the Federal Government to investigate suspected terrorists than it is to investigate Medicare fraud.

Leaving aside the wisdom of not allowing administrative subpoenas authorizing for terrorism investigations, I think it is fair to say that the revision of section 215 that now contains an explicit relevance test is strictly in the mainstream of American criminal law.

It is not a new concept to have to go before a judge and convince him or her that the Government needs certain relevant records, such as hotel or car rental bills, to investigate potential criminal activity.

If the judge does not think it is a bona fide investigation and is just a fishing expedition, the judge can deny the request.

The revised version of the PATRIOT Act section 215 requires the Government to certify that the business records sought are relevant to an authorized investigation to obtain information not concerning a U.S. citizen or to protect against international terrorism or clandestine intelligence activities.

Further, the revision to section 215 creates a three-part test that presumes such information is relevant if it pertains to:

1) a foreign power or an agent of a foreign power;
2) the activities of a suspected agent of a foreign power under investigation; or
3) an individual in contact with, or known to, a suspected agent of a foreign power under investigation.

Some have argued that this three part test is not strong enough or can be circumvented but the judges serving on the Foreign Intelligence Surveillance Court are neither potted plants nor is there any reason to believe that they will rubberstamp any application that is before them.

The new language includes additional procedural protections for section 215 orders including:

1) a foreign power or an agent of a foreign power;
2) the activities of a suspected agent of a foreign power under investigation; or
3) an individual in contact with, or known to, a suspected agent of a foreign power under investigation.
(1) The explicit right for recipients to consult legal counsel and to seek judicial review;
(2) The requirement that a senior FBI official approve requests for certain sensitive documents, such as library records;
(3) The use of minimization procedures to limit the retention and prohibit the dissemination of information concerning U.S. persons;
(4) Audits by the DOJ inspector general; and
(5) Enhanced reporting to Congress and the public on section 215 activities.

These are important protections, not all of which I believe are 100 percent necessary, but all of which I will support in the spirit of compromise.

Judicial review and approval is still required for every application for business records under section 215. All of these new provisions are intended to act to further safeguard against any potential abuse of power. Those who claim during this debate have claimed that the new, explicit relevance standard on section 215 will allow the Government to sweep up the records of many innocent Americans.

We all share the concern about the Government getting too big for its cans. Nobody wants Big Brother looking at our neighbor's personal financial, medical or library records without a very good reason. Under the PATRIOT Act, the FBI can obtain the records of any innocent American.

Americans are right to have a healthy skepticism of government. A large part of what our job as Senators in Washington is to watch over Government agencies like the FBI and IRS.

Some are criticizing the so-called gag order provisions of the NSL procedures that forbid public disclosure of ongoing national security investigations involving NSLs. But do we really want to let our sworn terrorist enemies know precisely how the Government is equipped to know when these requests are, and are not, relevant. As well, judges are well equipped to know when these requests are, and are not, reasonable and will rule accordingly.

Fourth, finally, let me address the issue of National Security Letters or NSLs. National Security Letters allow the FBI to obtain certain third-party materials in intelligence cases. The bill before us adds further protections in this area. For example, the bill makes clear that recipients of such letters are free to disclose the receipt of this letter to their legal counsel.

I guess we can only hope that suspected terrorists do not share the same attorney and possibly terrorist cell will not be tipped off. The bill provides further clarification that these requests may be challenged in court.

The bill makes clear that reviewing courts may modify or set aside the request if compliance would be unreasonable, oppressive, or otherwise unlawful.

The conference report language also permits judicial review of the non-disclosure requirement that attaches with NSLs.

As well, the conference report adds annual public reporting on NSLs. Some are suddenly now loudly complaining in the last few weeks that the standard for obtaining an NSL—which is a showing of relevance—is too low.

Where were the complaints about this standard before now?

National Security Letter and the standards and practices that apply to them predate the original PATRIOT Act which passed in the fall of 2001 in the aftermath of the September 11 attacks. The Senate bill—which was approved unanimously by the Judiciary Committee and by the full Senate by unanimous consent—did not make any changes in the standards for the issuance of National Security Letters. Nor did the House bill.

What is going on here? It sounds a little like a case of, even if it ain’t broke, let’s fix it.

Yet in the spirit of mutual respect and compromise, I am not opposed trying to improve what is already working well, particularly if changes are important to many both inside and outside of the Congress. That is what has been done with respect to NSLs during the House-Senate Conference process.

As has been referred to repeatedly in this debate, part of the concern stems from a series of articles that appeared in The Washington Post that reports that some 30,000 of these letters have been issued in recent years.

As Senator SPECTER and others have pointed out, the Department of Justice is prepared to give any member a classified briefing that sets the record straight on this topic.

There is scant, if any, evidence that NSLs have been abused.

NSLs can only be used to obtain a very limited range of documents—mostly financial and communications records. They cannot, as some have alleged during this debate, be used to acquire medical records.

I said before and will repeat again that the conference report expressly allows a recipient of a National Security Letter request to challenge the request in court and have it set aside or modified if a judge determines it unreasonable.

You would not know this from the way that some are describing this provision during this debate.

In fact, the conference report vehicle is simply more protective of civil liberties than the provision in the Senate bill, which was approved by unanimous consent earlier this year.

Specifically, the compromise language before us today requires a set of senior officials, including the Attorney General, Deputy Attorney General, Assistant Attorney General, or FBI Director to certify that disclosure will harm national security or diplomatic relations.

The Senate-passed bill gave that level of deference whenever any unspecified government officials made that certification. By confining the authority to issue NSLs to the most senior officials in DOJ and the FBI, the conference report helps ensure that it will be used with appropriate discretion.

Some are criticizing the so-called gag order provisions of the NSL procedures that forbid public disclosure of ongoing national security investigations involving NSLs.

But do we really want to let our sworn terrorist enemies know precisely...
that communication and financial records that we are examining in our attempts to thwart future terrorist attacks?

I think not. Nor do I think the American legal system that inordinately tips our hand to our enemies.

At the end of the day, I think that the compromises made with respect to NSLs in this bill should be recognized as a good faith effort to strengthen the rights of those who have legitimate challenges to the reasonableness of the governmental request for information.

In the spirit of compromise and in recognition that many citizens have expressed concerns about this bill and are just now focusing on the long-standing NSL procedures, I think it appropriate to make these accommodations so long as we do not unduly burden legitimate law enforcement needs and longstanding practices.

Let me summarize my position on the PATRIOT Act.

I support the Conference report revisions to the PATRIOT Act, although I do not favor each and every particular change.

I urge my colleagues to vote yes on cloture and yes on final passage.

I commend my friend, Chairman Jim Sensenbrenner, for his leadership of this conference committee.

I commend my friend, Senator Specter, for his leadership in working over time to achieve a broad bipartisan consensus on this bill.

I want also commend all of my fellow conferees, including all of those Democratic conferees who did not sign the conference report.

These are important issues and I understand and respect that many in Congress and the American public comes to this debate from different perspectives. I do not question anyone participating just because they are raising questions and concerns about this revised version of the PATRIOT Act. I might question their wisdom and judgment as pertaining to this particular bill but never the ism.

I hope that it comes time to vote that my colleagues will recognize that this is a good, compromise bill.

I understand that not everyone will agree with the forest and tittle of this bill—I certainly do not.

On balance the PATRIOT Act has worked well and we have every reason to believe that these changes will make the PATRIOT Act work even better.

This bill is good for Americans and bad news for the terrorists.

That is the way it should be.

I strongly disagree with those who would filibuster the motion to proceed to this conference report.

Let this body have the same up and down vote that the House held on Wednesday.

A three-month extension just shows the American public that this body cannot even do one of those rare and unusual must-do pieces of legislation in a timely fashion.

As well, no doubt some political puns will likely interpret a 3-month punt on the PATRIOT Act as a short-term political defeat for the administration.

But this is a double edged sword: The American public will not be pleased if, after they have had the time and opportunity to reflect on the facts, they conclude the failure to accomplish a comprehensive renewal and strengthening of the PATRIOT Act before the end of this year is interpreted by our enemies as somehow inviting enabling further terrorist attacks on U.S. soil.

The Senate should vote to send this bill to President Bush’s desk.

I ask unanimous consent that a letter to the immediate and House of Representatives from the board of directors of the 9/11 Families for a Secure America be printed in the Record.

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


To the United States Senate and House of Representatives:

The members of 9/11 Families for a Secure America ask you to vote “yes” on the conference report to HR 3199, the Reauthorization of the Patriot Act.

Our families understand that an important reason the 9/11 mass murderers were able to “succeed” in their conspiracy was the existence of “the wall” that blocked information sharing between law enforcement and the intelligence community. The Patriot Act removed that “wall” temporarily and it is important to now remove it forever so that the next 9/11 killers are not aided by the laws of our own country.

The Conference Report addresses many of the objections expressed by some Members to HR 3199 as passed by the House, and is a most reasonable compromise. It is quite apparent that the remaining objections, expressed by a few Members, are based upon theoretical possibilities for abuse of civil liberties. However, the four year history of the Patriot Act has shown what the Washington Post calls “little evidence of abuse, and considerable evidence of how law has facilitated needed cooperation.”

Thus, the objections of the opponents of HR 3199 are simply illusions. In contrast, it is not an illusion that nineteen foreign terrorists took advantage of our government’s refusal to give its law enforcement and intelligence officers the logical and obvious tools needed to catch the conspirators prior to September 11, 2001. The result was the murder of our first responders and our own friends. We are convinced that the reality of 9/11 outweighs the minor, hypothetical objections that have been raised.

Some Members may think the final version of HR 3199 not quite perfect, but defeat of the Patriot Reauthorization means freedom of operation for terrorists and needless deaths of innocent Americans. We think that concern for the safety of this country demands that these Members compromise and accept somewhat a little less than what they view as perfection. Please vote “yes” on the conference report to HR 3199.

Sincerely,

The Board of Directors, 9/11 Families for a Secure America:

Bruce DeCell, Sergeant, NYPD (retired), father in law of Mark Petrocelli, age 29.

Bill Doyle, father of Joseph, age 24, WTC North Tower.

Lynn Faulkner, husband of Lynn, WTC South Tower.

Peter & Jan Gadiel, parents of James, age 21, WTC South Tower.

Grace Godshalk, mother of William R. Godshalk, age 35, WTC South Tower 89th floor.

Joan Molinaro, mother of Firefighter Carl Molinaro.

Will Seckzer, detective Sergeant (retired), NYPD, brother of Jason Seckzer, age 31, WTC North Tower 106th floor.

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

The PRESIDING OFFICER. The chair will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

WAR IN IRAQ

Mr. THUNE. Mr. President, I rise today to speak briefly about the progress on the war in Iraq and, importantly, the well-being and morale of our troops in the field.

Last week, the State of South Dakota lost two of its sons in Iraq, SSG Daniel Cuka, 27, from Yankton, SD, and SFC Richard Shield, 40, from Tabor, SD. Both served in the 147th Field Artillery of the South Dakota National Guard and were killed by improvised explosive devices while riding in their humvees.

They were assigned the mission of assisting in the training of Iraqi police. Three other members of their battery were also wounded. South Dakota is now in the process of grieving for and honoring these two brave men who answered the call of duty.

One week after this tragic loss, an historic event occurred today in Iraq that gives particular meaning and value to the lives and sacrifice of these two men. Today Iraq held a national election to fill parliamentary seats and it appears that there was a massive turnout of voters from each of the major ethnic and religious groups, including from the Sunni population that only a few months ago rejected any participation in the political process.

This election is only the latest in a series of milestones giving testimony to the great progress that has already been made in our effort to transform this country into a democracy. Granted, it will be a long road to the kind of democracy we have in this country. But it was a long and bumpy road in our own journey. The fact that this Iraqi election occurred at all is amazing considering where the people of Iraq were 5 years ago, without freedom to determine their future and under the heel of Saddam Hussein’s tyranny.
The two fallen soldiers who are being
honored today at a memorial service in
South Dakota gave their lives for a
cause greater than themselves. Those
family members they left behind de-
scribe to know their sacrifices were not
in vain.

We will win this war and Iraq will be
a free independent democracy. When
our work is finished, Iraq will provide
a vision and a clear path for other coun-
tries in the Middle East to follow to
true democracy. As Americans, we cannot leave the
Iraqi people with anything less.

I ask unanimous consent that a writ-
ten statement honoring and paying
tribute to Sergeants Cuka and Schild,
some of our soldiers in the war on terror, be printed in the
RECORD.

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

Mr. President, South Dakota has paid a
heavy price in the effort to make Iraq a func-
tioning democracy and the world a safer
place. To date, fifteen South Dakota soldiers
have made the ultimate sacrifice in Afghani-
tan and Iraq, nine of whom died from hos-
tile fire. About 85 percent of South Dakota’s
National Guard members have been mobi-

lized. Every single one of these soldiers
from my state paid the ultimate price, and
three more were wounded. I rise today to
give voice to the tremendous sympathy all
South Dakota citizens have for the families
and friends of each of the courageous soldiers
our state has lost and this month, specifi-
cally, Army Sgt. 1st Class Richard Schild and Army Sgt. Daniel Cuka. On De-
cember 4th these two soldiers of the South Dakota National Guard were killed by road-
side bombs in Iraq as they went about the
dangerous and critically important mission
of training the Iraqi Police Force in one of
Baghdad’s police districts. They have made
the ultimate sacrifice in service to our na-

tion, and we as a nation will be forever in
their debt.

The soldiers of Battery C of the 147th Field
Artillery unit arrived in Baghdad only very
recently, and have been exposed to the
terror of war, and the deaths of some of
their friends. South Dakota has a very small
population, Mr. President, and word of the
death of our brave men fighting the
war on terror has hit us very hard. I am
proud of our state’s outpouring of support
during this time of great personal tragedy
for the loved ones Sgts. Schild and Cuka.

Iraqi citizens develop the means to protect
themselves, build a democracy, and enforce
the law. They were part of an effort to make
the world a safer and freer place for us and
future generations of Americans.

I ask unanimous consent that the order
objection, it is so ordered.

Mr. THUNE. What they gave to the
State of South Dakota, to this great
country, and to the people of Iraq
should never be forgotten.

I yield the floor and I suggest the ab-

The PRESIDING OFFICER. The
clock will call the roll.

The legislative clerk proceeded to
call the roll.

Mr. MCCONNELL. Mr. President, I
ask unanimous consent that the order
for the quorum call be dispensed with.

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I
ask unanimous consent that there be
a period of morning business with
Senators permitted to speak for up to
10 minutes each.

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

IRAQI VOTE FOR FREEDOM

Mr. FRIST. Mr. President, today
marks a proud and momentous day in
Iraq’s history. Today, on December 15,
2005, 15 million registered voters will go to the polls to choose their first permanently elected government in modern Iraqi history. Along with them, Iraqis from all around the world will cast their votes for freedom, for Iraq's future— including Iraqi Kurds in my home town of Nashville.

As it so happens, Nashville is home to the largest Kurdish population in the United States of approximately 8,000 Iraqi expats. This past January, over 3,000 of our Kurdish neighbors voted in the historic January 30 elections which put Iraq on the road to independent, democratic self-rule. Tennessee election organizers predict that the turnout for today's vote will be double that number.

Iraqis from all around the region are converging on Nashville to cast their votes in solidarity with their brothers and sisters of their native land.

Susan Dakak, whose family moved from Baghdad to Tennessee 27 years ago, told The Chattanooga Times Free Press, “This is a dream come true. I never thought in my life that Iraq would get to where it is politically.”

Susan and her husband, Janan, plan to travel from Knoxville to Nashville, and bring their two sons with them to witness the personal and historic moment of casting their ballots as free citizens. And as Susan understands, her vote is not just for her birth country, but for her adopted country, as well.

Susan and Janan’s votes, along with the millions of Iraqis voting today, are critical to helping defeat the terrorists and vanquishing their violent aspirations.

As Susan explains:

This will be the beginning of the end of all of the violence. The new Iraqi government will know that it will be their responsibility to clear the terrorists out of the country. In the short run, today's broad participation by all Iraqis to isolate the terrorists and constructively engage Iraqis across ethnic and sectarian lines. And in the long run, a peaceful, united, stable and secure democracy in the heart of the Middle East will expose the brittle and intolerable tyranny of the terrorist enemy. And it is precisely this outcome that our terrorist enemies fear.

Early in the conflict, a letter from Al Zarqawi was intercepted by coalition forces. It noted that a free and prosperous Iraq would reject his vision of a medieval, fundamentalist state. He recognized that if Iraqis became accustomed to self-determination and self-rule, they would refuse to submit to a tyrant and they would reject his extreme interpretation of Islam.

Furthermore, Iraq would become a model for the entire Middle East region, driving out extremism and herding in moderation and peace. Al Zarqawi understands the power ofedom. That is why he is bent on its destruction. But as this remarkable year of steady progress has proven, he cannot and will not succeed. The desire of freedom is too strong and its logic is too irreducible.

Democracy is on the march and today 15 million Iraqis are heading to the polls. Once again, they are showing the world their extraordinary courage and determination to join the modern, free world.

America pledges to stand with the Iraqi people in that worthy effort as they strive to secure the blessings of liberty.

As Tahir Hussain, president of the Nashville Kurdish Forum, told a Tennessee paper on this week:

We say that everybody should have a voice in Iraq, and everybody should be equal. And today is the day.

Mr. BYRD. Mr. President, in my book, “Child of the Appalachian Coal Fields,” I discussed the Senate class of 1958. That class included 15 Democrats and 3 Republicans, constituted the largest turnover over in Senate history, and from that class of Senators came Senate leaders and Presidential candidates. Most important, I pointed out, while elected during the Eisenhower administration, the class of 1958 “tackled some of the greatest foreign and domestic problems ever faced by the Nation, and they played critical roles in enacting the Great Society programs and ending the war in Vietnam.”

One of the most remarkable members of that remarkable class was Senator Eugene McCarthy of Minnesota, who passed away this weekend. He played critical roles both in enacting the Great Society programs and ending the war in Vietnam.

It was my privilege and my pleasure to serve with Eugene McCarthy in the U.S. House of Representatives and here in the Senate as members of the class of 1958.

While serving together, I came to appreciate that Senator McCarthy was a truly gifted and talented person with an extraordinary background. He was, without question, one of the more unusual Members to sit in this chamber. He was a poet, professor, philosopher, and author, and had been a military intelligence official during World War II and a semiprofessional baseball player. He was, in short, the perfect man for the Democratic Party activists.

In the Senate, as throughout his life, Senator McCarthy did not hesitate to go his own way. He did not hesitate to stomp out of a Senate hearing, and he was willing to espouse unpopular views, but to wage this so with an open heart, an open mind, and deep sincerity and dedication. Therefore, even when I disagreed with him, which was quite often in those early years, my respect for him continued to increase.

And I developed a deep appreciation for his directness, his warm personality, and his strong determination to make ours a better country. One of his first assignments in the Senate was chairing the Select Committee on Unemployment, which helped focus national attention on the problems of joblessness and poverty throughout the country. By holding hearings in Beckley, Welch, Fayetteville, and Wheeling, WV, as well as other economically distressed regions of the country, the Select Committee helped undermine the false claims of the so-called Republican prosperity of the 1950s, and, as a result, helped provide the ground work for the Great Society legislation that came a few years later.

As I said earlier, it was members of the class of 1958 who also helped to end the war in Vietnam. Although all of us had voted for the Tonkin Gulf Resolution, many of us came to regret it. Senator McCarthy, to his great credit, was one of the first to speak out against the war. He did so by announcing his break with the Johnson administration, and running against the President for the Democratic presidential nomination in 1968. He did so with the understanding, as he said, “seems to have set no limit to the price which it is willing to pay for a military victory.”

No one expected much from McCarthy’s challenge. He was a little-known Senator, taking on President Johnson who, at the time, seemed all powerful.

But, as most of us know, in the 1968 New Hampshire Democratic primary, Senator McCarthy stunned the Nation and the Administration when he took the most unexpected victory possible in the primary. His near victory helped to drive President Johnson out of the Presidential race. This contest showed how unpopular the war was. It focused attention on, despite the administration’s claims to the contrary, just how disastrous its policies were in Southeast Asia. It brought home to the American people an issue that was dividing the country and costing billions of dollars and thousands of American lives. Furthermore, Senator McCarthy’s campaign helped embolden a generation of young Democratic Party activists.

When Senator McCarthy announced that he would be leaving the Senate in 1970, I was one Senator who approached him and tried to change his mind. When I was unsuccessful, I came to the Senate Floor to pay tribute to him. Senator McCarthy, I said, “has made his mark upon our party, he has made his mark upon our country, and he has made an indelible mark upon the hearts of all in the Senate who are privileged to call him friend.” I said, “he proves the truth of that verse of Scripture that states, ‘He that hath friends must show himself friendly.’”

I have never wavered in those opinions that I expressed 35 years ago. In fact, our friendship became stronger, as did my admiration of him.

Mr. President, our country has lost a good and talented man, and a great American. I will miss my friend. Our country needs more men like him. God give us men!

A time like this demands strong minds, great hearts, true faith, and ready hands.
Men whom the lust of office does not kill;  
Men whom the spoils of office cannot buy;  
Men who possess opinions and a will;  
Men who have honor; men who will not lie.  
Men who can stand before a demagogue  
And be his treacherous flatteries without winking;  
Tall men, sun-crowned;  
Who live above the fog,  
Tall men, sun-crowned;  
And brave his treacherous flatteries without shirk.

God Give us men!  
Men who serve not for selfish booty;  
But real men, courageous, who flinch not at duty.  
Men of dependable character;  
Men of sterling worth;  
Then wrongs will be redressed, and right will rule the earth.  
God Give us men!

WEAK-KNEED BUDGET TRICKS

Mr. BYRD. Mr. President, before we adjourn, the Congress will be asked to vote on an across-the-board cut for every program in the Federal Government. The Congressional majorities have put this Nation on an irresponsible fiscal path, one that promises years of record-breaking red ink, inflationary pressures, and multiplying debt. Instead of making tough choices on spending priorities, or perhaps limiting the massive tax breaks going to Nation’s richest citizens, or finding ways to lessen the burden of the war in Iraq on the American citizens, the Republican Congressional leadership is expected to take the expedient route of an across-the-board funding cut.

This may not seem like a big deal. What’s 1 or 2 percent? But to the families across this country, that 1 or 2 percent means world of difference, especially when it is coupled with the freeze in services that has already been applied to Federal initiatives.

Take, for example, community health centers which provide basic health care for some of our most isolated citizens. This arbitrary Republican plan would mean that 55 clinics would be shuttered, and 73,000 Americans would see their health care held hostage by budget games. A 2 percent cut in the Food and Drug Administration budget would force unacceptable delays in the amount of time that it takes to approve new lifesaving drug and medical devices.

At a time when the Congress is considering tax cuts for the wealthy, after a 2 percent cut, food packages for 65,922 elderly participants would vanish. A 2 percent cut in the WIC program would reduce the number of meals for 175,234 economically struggling women, infants, and children. More than 35,000 families would lose access to safe and affordable housing. Under this Congressional leadership, the rich get richer, while tens of thousands of poor and the elderly have to struggle for food and shelter.

The House has passed four tax cut bills, totaling $95 billion, and the Senate has passed tax cuts which add up to $58 billion. The vast majority of these tax cuts are aimed at improving the economic portfolios of the wealthiest Americans at the expense of those Americans who are barely scraping by. At the same time that this Congress is pushing forward with unwise tax cuts, these across-the-board cuts would weaken the Nation’s crumbling infrastructure and rob the economy of new jobs. In fact, a $720 million cut in highway construction, as put forward under the Republican blueprint, would slash more than 34,200 construction jobs from our economy. How many headlines about companies cutting payrolls by the tens of thousands will it take before this Congress stands up and puts the American people first? American families deserve to know that the safety net is not filled with holes. But instead of offering assurances, this Republican plan only serves to jeopardize the future of many Americans.

Children in school districts with a high median income would also suffer. These school districts, which receive title I funding, would have to scramble to fill a $257 million reduction. That kind of cut would hamstring the education of more than 200 students around the country. At the same time, special education funding would drop by $214 million, and the number of children in Head Start would be cut by 19,000. Cutting the funds for classroom education may achieve short-term fiscal goals for the Republican majority, but it creates long-term problems for the Nation’s future.

Don’t care about the classrooms? Think that school districts can absorb this cut with higher property taxes? These are our future veterans! Each day, new veterans come home from the wars in Iraq and Afghanistan. They join our proud men and women who have served in World War One and World War Two, in Korea, in Vietnam, and in so many places around the world. These men and women have made us proud. Many of these 21st century veterans have specialized health care needs. The battles of modern warfare are as different as they are new. Americans, sailors, airmen, and Marines of past wars. Veterans’ health care is a responsibility that we must never shirk.

But what do these veterans get in return for their service? More budget cuts from this Congressional majority. The GOP plan means cuts in treatment for approximately 236,000 patients. It means that 1.4 million outpatient visits would disappear. Waiting lists would likely rise by about 176,000 veterans. In addition, the VA will not be able to expand specialty and mental health services at existing sites as planned.

But the short-sighted effects of this Republican cut to America’s working families, classrooms, and veterans are only one aspect of backwards priorities of this Republican funding plan. Just this week, the President reiterated his effort to protect the American people from future terrorist attacks. But how much safer will the American people be if the Republican blueprint for budget cuts is signed into law? How much safer will the Nation be with 800 fewer Federal screeners?

Similar cuts would face the Drug Enforcement Agency. Under this Republican scheme, the DEA would be forced to cut its planned force by 200 agents. The President and his team have stated that more than 1,000 TSA screeners would lose their jobs. This is on top of the 2,000 person reduction in screeners already approved by this Congress. At the same time, funding for explosive detection equipment for baggage and passengers would be decreased by $12 million. And safety in the skies would be placed at risk.

We all watched the Coast Guard perform marvelously after Hurricane Katrina devasted Mississippi and Louisiana. But rather than reinforcing the Coast Guard’s ability in future disasters, the 2 percent rollback would reduce cutter patrol hours by at least 10,000 hours and aircraft hours by at least 2,000 hours. And military recruiting would be reduced by 60 percent—or 1,158 Coast Guard personnel.

I urge my colleagues to think again about this fiscal foolishness. Think about what it means for our children and the safety of our families. Think about what it means for our veterans and for our security.

The American people elect Members of Congress to lead, to make tough choices, and to place the best interests of the Nation at the forefront of our work. This across-the-board cut is not leadership, and it is not in the best interests of the Nation.

DEFENSE AUTHORIZATION ACT

Ms. SNOWE, Mr. President, as chair of the Senate Committee on Small
Business and Entrepreneurship, I rise in support of amendment No. 2529 which was unanimously adopted into S. 1042, the National Defense Authorization Act for fiscal year 2006. This amendment will restore much needed transparency to small business contracting programs for overseas contracts and subcontracts to perform maintenance and support of U.S. military forces abroad. The amendment promotes international competitiveness of our Nation’s small businesses, and ensures fair access of small businesses to Federal contracts and subcontracts to perform performance overseas.

Currently, many small contractors play a critical role in maintaining a strong American defense industrial base and supporting the Global War on Terror. Yet many of these small firms face serious obstacles obtaining prime contracts and subcontracts to perform internationally. They are already performing so ably domestically. Simply put, this amendment would clarify that the Small Business Act applies to all overseas contracts.

In the 2001 report, “Small Business: More Transparency Needed in Prime Contract Goalning Program,” the Government Accountability Office criticized the Small Business Administration, SBA, for the Department of Defense, DOD, and other agencies for excluding contracts from the calculations of small business contracting achievement toward the statutory goals established in the Small Business Act based on tenuous rationales. On its face, the Small Business Act applies to all Federal procurements, including all overseas contracts. However, recently there has been some resistance to implementing the Small Business Act as written. Some agencies, like the Department of Defense, go as far as to exempt all overseas-related contracts from the act. Others, such as the Department of State, exempt contracts for performance abroad if they are also awarded but if the work is performed domestically. As a result, smaller contractors and subcontracting requirements of the Small Business Act are rendered unenforceable with regard to many military and reconstruction projects, and fair access for small businesses is seriously diminished.

Based on fiscal year 2000 dollars, the GAO found that approximately $8.4 billion in overseas defense contracts were excluded from counting toward the Federal Government’s small business performance. Under the Small Business Act, $1.93 billion of these contracts should have been awarded to small businesses. The SBA’s and the DOD’s rationale for excluding overseas contracts was that small firms have little chance of competing for these contracts in the first place.

The excuse given by the SBA and other agencies to the GAO in 2001 did not hold then, and it surely does not hold now. With an expanded Federal presence in recent years, the dollar volume of overseas contracts has been steadily increasing, and small firms have been playing a substantial part in supporting Federal operations abroad. Indeed, every major contract for the reconstruction for the reconstruction of Iraq funded by the $18.4 billion in emergency supplemental appropriations has a minimum 10 percent requirement for small business subcontracting and a 23-percent subcontracting goal. Our experience with Iraq reconstruction proves that American small businesses are capable to perform overseas even in the most dire circumstances.

Congress clearly meant what it said in the Small Business Act that procurement goals must be calculated against “total purchases” of the Federal Government. My amendment reaffirms congressional policy that the Small Business Act applies to all contracts and subcontracts regardless of geographic place of award or performance. This amendment directs Federal agency heads with jurisdiction over acquisition to provide for multiple-award contracts and subcontracts, regardless of geography, are covered by the Small Business Act. Under my amendment, agencies will be able to give due note and recognition to the specific requirements and procedures of any other Federal statutes and provisions governing foreign military sales, which may exempt any Federal prime contract or subcontract from the application of the Small Business Act in whole or in part.

I urge my colleagues to help keep America’s defense industrial base and America’s global competitiveness strong by supporting fair access to prime contracts and subcontracts by our small businesses.

Mr. President, as chair of the Senate Committee on Small Business and Entrepreneurship, I rise today in support of my amendment No. 2530 to S. 1042, the National Defense Authorization Act for fiscal year 2006. Congress clearly meant what it said in the Small Business Act. I am pleased that this amendment was adopted unanimously, and I urge my colleagues to support it in conference. Since the enactment of the Federal Acquisition Streamlining Act, FASA, in 1994, Federal agencies are increasingly relying on contracts and acquisition services offered by other agencies, specifically, the General Services Administration’s Multiple Award Schedule/Federal Supply Schedule contracts, HHS/Department of Health and Human Services acquisition contracts, GWACs, and multi-agency contracts, MACs, to purchase goods and services. These contracting mechanisms were authorized by Congress in the belief that they would encourage the Government to buy commercially available products and services and would open the Federal contracting market to businesses, especially small businesses, which have previously focused only on the private, commercial sector. Essentially, indefinite-delivery, indefinite-quantity contracts are framework agreements on prices and other terms for any future sales to the Government. In the procurement community, these contracts are popularly known as “hunting licenses” because they permit preapproved contract holders to secure Government work with very limited competition as a result of direct contracting. Federal contracting officials can place task orders against these contracts with their preferred, preapproved vendors. This amendment is a modest response to numerous complaints from representa-tives of small businesses and small business trade associations that the actual process for receiving task orders under multiple award contracts, such as the Federal Supply Schedules and multi-agency contracts, tends to be biased in favor of large businesses and experienced Government contractors.

Small business representatives testified before my committee that they invest time, effort, and resources to negotiate only for 37.1 percent of sales dollars. For instance, in recent proceedings before the White House Acquisition Advisory Panel, a representative of the General Services Administration/GSA, indicated that multiple Award Schedule/Federal Supply Schedule sales reached $31.1 billion in fiscal year 2004. GSA further indicated that small businesses held 79.6 percent of total MAS/FSS contracts, but accounted for only 23 percent of Federal procurement dollars. At first glance, this level of small business participation is commendable. It exceeds the statutory Government-wide goal of awarding 23 percent of Federal contract dollars to small businesses. However, the disparity between these numbers confirms the complaints of small businesses about the barriers they have been facing in Federal indefinite-delivery, indefinite-quantity contracts. I look forward to working with the GSA, the Small Business Administration, and other agencies towards a greater parity between small business participation in the Schedule program itself and their share of contract dollars awarded through this program.

In the acquisition world, there is a perception that contracting officers routinely persist in limiting upcoming task order opportunities to a maximum of three companies on any particular contract. This is generally true with the GSA Schedule instead of the three-company minimum as required by law. This situation is a recurring subject of protest by small businesses and experienced Government contractors.

Earlier this year, an article in the Veterans Business Journal asked...
to commend Senator KERRY, as well as Senators WARNER and LEVIN, the leaders of the Senate Armed Services Committee, for their bipartisan cooperation on the important subject of accelerating innovation and procurement of innovative technologies by the Federal Government. I also want to thank Dr. Charles Wessner and others at the National Academy of Sciences who have worked on a congressionally authorized study of the SBIR program, the Small Business Technology Transfer, the Association for Manufacturing Technology, and numerous representatives of Federal agencies, small businesses, and representatives of large prime contractors for the insights into the work of the SBIR and the STTR programs which they have provided to my committee over the years.

Today, the Federal Government spends approximately $2.3 billion on phase I and phase II awards for the SBIR and phase I and phase II awards for the STTR programs, with $2.2 billion spent through the SBIR awards to small businesses. The Department of Defense is the major participant in this program, accounting for approximately $1.1 billion in SBIR spending and nearly $50 million in STTR spending. These funds provide a substantial stimulus to the American innovation system, and it is the task of this Congress to ensure that these funds are wisely spent. A key part of this effort is the existing science and research requirements for the small business research and development programs. This amendment directs the Department of Defense to base its SBIR and STTR research and development priorities on the Department’s most current Joint Warfighting Science and Technology Plan, the Defense Technology Area Plan and the Basic Research Plan and to solicit input from program management officials.

In addition to the phase I and phase II awards, the Department of Defense awarded over $456 million in phase III contracts in fiscal year 2004. But the need for innovative technologies in our defense procurement is far greater. The SBIR and the STTR authorities enable contracting officers to quickly buy high-tech products and services for our warfighters. Unfortunately, the commercialization rate from research and development to product acquisition has declined, in part, because of misaligned science and research requirements for the small business research and development programs. This amendment authorizes a Commercialization Pilot Program at the Department of Defense and component military departments. Under this program, the Secretary of Defense and the military secretaries would be required to identify SBIR programs critical for accelerated transition into the acquisition process. The amendment authorizes the use of one percent of SBIR phase I and phase II funds for administrative expenses of this pilot. Congress will be kept abreast of this pilot through detailed evaluative reports.

As chair of the Senate Task Force on Manufacturing, I have been concerned about the deteriorating manufacturing base of our Nation, especially the impact of this trend on the defense industrial base. To stem this decline, President George W. Bush signed Executive Order 13329, Encouraging Innovation in Manufacturing, in February 2004. This order directs Federal agencies which participate in the Small Business Innovation Research Program and the Small Business Technology Transfer Program to give “high priority” to manufacturing-related research and development projects to the extent permitted by law. The amendment incorporates this Executive order into law and directs the Small Business Administration and all other relevant agencies to fully implement its tenets.

Finally, the amendment will expand the authority of Federal agencies and prime contractors to use phase II and phase III awards under SBIR and STTR for testing and evaluation of innovative technologies developed by small businesses for use in technical or weapons systems. Insertion of SBIR or STTR technologies into large, integrated systems is often not possible without significant testing efforts. By clarifying that either phase II or phase III may be used for these purposes, the amendment will provide incentives to agency program managers and to large systems integrators to commercialize the fruits of the SBIR and the STTR research.

Our Nation’s small businesses are also our Nation’s innovators. They secure approximately 13 times more patents than large businesses. I urge this Congress to support in conference my measure for keeping America secure in war and in competitive internationally.

ANTI-SEmitIC STATEMENTS BY THE PRESIDENT OF IRAN

Mr. SMITH. Mr. President, I rise today to register my outrage against a series of vehemently anti-Semitic comments made by Iranian President Mahmoud Ahmadinejad. These remarks, all of them vile and baseless, should be condemned by the Senate. Let me describe some of these remarks for the RECORD.

At a conference in Tehran on October 26, President Ahmadinejad said, “Israel must be wiped off the map. The Islamic world will not let its historic enemy live in its heartland.”

Then, on December 8, he continued his assault, saying “Some European countries insist on saying that Hitler killed millions of innocent Jews in furnaces. But we in Islamic countries think Hitler saved the Jews.”

If the Europeans are honest they should give some of their provinces in Europe—like in Germany,
Austria or other countries—to the Zionists and the Zionists can establish their state in Europe.”

And, just yesterday, President Ahmadinejad claimed that “They have fabricated a legend under the name of ‘Massacre of the Hebrews’, and they hold it high-handedly, to emulate the God himself, religion itself and the prophets themselves”.

Mr. President, I do not even know where to begin. Insidious rhetoric such as this is designed to do nothing other than detract and incite hostility.

I have walked the grounds at Auschwitz. I have seen the crematoria. To claim that one of the greatest tragedies in the history of humanity is merely a fabrication to advance a political agenda is simply beyond the pale. But what is worse is that these comments are not isolated. They are a part of persistent, state-sponsored anti-Semitism that is now commonplace in the administration of President Ahmadinejad.

On the eve of the elections in Iraq, one of the greatest democratic milestones in the history of the modern Middle East, I hope that we can work to move past this gross intolerance on the part of the Iranian President.

FREE GUN LOCKS FROM PROJECT CHILDSAFE

Mr. LEVIN. Mr. President, tragedies involving firearms and guns continue to repeat themselves with alarming frequency around the country. According to local police, at least five Detroit children have been accidentally shot and killed this year alone. Just last week a three year old boy in Detroit nearly lost his life when he accidentally shot himself in the chest with his father’s gun.

Following that shooting, Detroit police spokesman James Tate said, “It appears this could have been prevented if a gun lock was on and the gun was secured. It’s unfortunate that we end up responding to these types of scenes when there are free gun locks readily available around the city.”

One source of free gun locks is Project ChildSafe, the Nation’s largest firearm safety education program. This program has provided more than 35 million “firearm safety kits” to gun owners around the country, including more than 517,500 in Michigan this year. Each firearm safety kit includes a free gun lock and materials to educate firearms owners about safe gun storage practices.

Free gun locks from Project ChildSafe are available year round through many local police departments. According to Project ChildSafe, if a local law enforcement agency does not have safety kits available for residents who request them, that agency may contact their governor’s office to receive a supply. In addition, Project ChildSafe provides a number of major public events including State fairs, sportmens’ festivals, and community safety days to distribute firearm safety kits. More information on safe gun storage practices and how to acquire a free gun lock can be found on the Project ChildSafe website at www.projectchildsafe.org.

The Project ChildSafe website also includes information concerning a number of additional practices to reduce the risk of unintentional shooting. In addition to using a gun lock, Project ChildSafe suggests locking up ammunition in a location separate from the firearm. Statistics show this additional precaution can have a dramatic impact on the risk of unintentional shooting. A study published earlier this year in the Journal of the American Medical Association found that the risk of unintentional shooting or suicide by minors using a gun is reduced by as much as 61 percent when ammunition in the home is locked up. Simply storing ammunition separately from the gun reduces such occurrences by more than 50 percent.

Common sense alone tells us that safe firearm storage practices, including the use of gun locks, reduces the risk of accidental shootings. I hope that firearms owners in Michigan and around the country join those who have already chosen to take advantage of the free gun locks and educational materials provided by Project ChildSafe so that fewer children are killed and seriously injured in accidental shootings.

ELECTIONS IN IRAQ

Mr. KENNEDY. Mr. President, all Americans are in pain the way the Iraqi people once again demonstrated their courage, dedication, and resilience by going to the polls to place their future—and the future of their country—squarely on the side of democracy.

Every American salutes our men and women in uniform who are serving so ably under enormously difficult circumstances, and whose dedication and sacrifice have made today’s elections possible. More than 2,100 of America’s finest soldiers have made the ultimate sacrifice in Iraq and we owe them and their loved ones an immense debt of gratitude. We all hope that successful elections will give the Iraqi people new confidence that a brighter future lies ahead.

Successful elections can and should be the turning point we’ve been waiting so long for, when our troops can begin to come home. As our Ambassador to Iraq, Zalmay Khalizad, said today, because the training of the Iraqi security forces is proceeding, “some draw down can begin in the aftermath of the elections.”

An open-ended commitment of America’s military forces does not serve America’s interest and it does not serve Iraq’s interests. If America wants a new Iraqi government to succeed, we need to let Iraqis take responsibility for their own future.
understand that not everyone in the United States agrees with the Bush plan for prolonged inaction.

To this end, members of my staff traveled to Montreal and met with representatives and negotiators from other countries as well as many interest groups, business groups, and others interested in taking positive action on climate change. They witnessed firsthand how the Bush administration is burying our heads in the sand and leading the way on climate change, not following the lead of other countries. They also met with public interest groups, business groups, and others interested in taking positive action on climate change. They witnessed firsthand how the Bush administration is burying our heads in the sand and leading the way on climate change, not following the lead of other countries.

States, represented by their governors, are taking on climate change related commitments. Nine Northeastern and Mid-Atlantic States are working together through the Regional Greenhouse Gas Initiative, RGGI, to develop a cap-and-trade system for carbon dioxide, CO₂, emissions from power plants.

On June 1, 2005, California Governor Arnold Schwarzenegger signed an executive order setting greenhouse gas emissions targets for the State. The order directs State officials to develop a plan for the reduction of greenhouse gases by 2020, in line with commitments to the Kyoto Protocol. California has also adopted a greenhouse gas emission standard for automobiles, and a number of States, including Vermont, have followed suit and adopted the same standards. These actions confirm that America is determined to take the necessary steps for a low carbon future. They also provide a mandate and undisputed political desire and motivation to take action within the United States to reduce greenhouse gas emissions.

I have sponsored legislation to reduce greenhouse gas emissions from powerplants, which are a large source of carbon dioxide, a principal greenhouse gas. My bill, S. 150, the Clean Power Act, would reduce greenhouse gas emissions to 1990 levels by 2010. This would be a very important first step in the United States' commitment to global warming that would show the rest of the world that we are serious about doing our part. Congress needs to act to provide a mandate and undisputed authority to this and future administration negotiators.

I am both discouraged and heartened by the outcome of the talks in Montreal. Those of us who care about stopping climate change did everything we could to help aid these talks, and despite the Bush administration resistance, the international dialogue on climate change will continue.

But a dialogue is not nearly enough, and the consequences of additional delay are dire. The U.S. has been and will remain the largest emitter of greenhouse gases. It has a responsibility to its own people and to the people of the world to be a leader on this issue. This is the right thing to do, and I hope that President Bush will act to limit greenhouse gas emissions from powerplants, which are a large source of carbon dioxide, a principal greenhouse gas. My bill, S. 150, the Clean Power Act, would reduce greenhouse gas emissions to 1990 levels by 2010. This would be a very important first step in the United States' commitment to global warming that would show the rest of the world that we are serious about doing our part. Congress needs to act to provide a mandate and undisputed authority to this and future administration negotiators.

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Mr. OBAMA. Mr. President, I rise today to call attention to the heroic efforts of Dr. Cynthia Maung and her Mae Tao clinic to provide hope on the border of Thailand and Burma. Dr. Maung, herself a Burmese refugee, has dedicated her life to helping those fleeing political and economic turmoil in our part. I believe that is what we agreed to in 1992, when the Senate ratified the climate treaty and it is high time we live up to our obligation.

ANWR

Mr. FEINGOLD. Mr. President, over the past year, and on more occasions than I'd like to remember, I have talked about the abuse of process that characterizes efforts to drill in the Arctic Refuge have resulted in their attempts to pass an unpopular and misguided measure. Sadly, the Senate faces the very same issue today. Let me unequivocally state that talk of attaching an extraneous and obviously controversial provision regarding the Arctic National Wildlife Refuge to the Department of Defense appropriations conference report—a provision that was not included in either the House or Senate versions of the bill—would set a bad precedent and is flat out irresponsible and should be rejected.

This last-ditch effort to attach the Arctic Refuge drilling provision to the Department of Defense appropriations bill—or any other bill that is a ‘must pass’ before the end of this year—really reflects poorly on this body. And, what does it mean for greater mischief down the line? That whenever we can’t move an unpopular proposal through the regular legislative process, there’s no need to worry: you just attach it to an important funding bill? Is this the precedent that we, members of both parties, want to set? I sincerely hope not.

I believe it to be very clear: I would prefer to be talking about setting a new path for our country’s energy policy—a path that reduces our use of fossil fuels while favoring renewable sources of energy. Unfortunately, some of my colleagues are dead set on the past, instead of to the future, for our sources of energy and are even willing to go so far as to use the bill that funds our men and women in uniform as a vehicle for their controversial measure, I am deeply disappointed by this latest move.

I strongly urge any of my colleagues who are currently trying to add language to the Defense appropriations bill, or any other bill that we need to consider in the coming days, that would open up the Arctic Refuge to oil and gas development, to reconsider those efforts. Continuing down that path, the path of circumventing established legislative processes to move measures that can’t pass on their own merits, is an irresponsible abuse of the rules under which we operate that should be rejected out of hand.

DR. CYNTHIA MAUNG

Mr. OBAMA. Mr. President, I rise today to call attention to the heroic efforts of Dr. Cynthia Maung and her Mae Tao clinic to provide hope on the border of Thailand and Burma. Dr. Maung, herself a Burmese refugee, has dedicated her life to helping those fleeing political and economic turmoil in
Burma. Few Burmese refugees are granted official refugee status in Thailand, making it almost impossible to obtain healthcare, employment or education.

On the outskirts of the town of Mae Sot, Dr. Maung started a makeshift facility for homeless refugees as they began crossing by the thousands into Thailand, following the Burmese junta’s brutal crackdown on the democracy movement in 1988. Mae Tao is now a thriving clinic treating around 70,000 people a year. From providing maternity care and family planning to treating infectious diseases and fitting landmine victims with prosthetics, the Mae Tao clinic represents some of the most vulnerable people in the world. This is a mission we should do everything we can to support.

Dr. Maung’s tireless efforts have not stopped with the Burmese refugee population in Thailand, as she trains medical teams to deliver health services to remote villages in Burma. Unable to return to her homeland, Dr. Maung continues to be a fearless advocate for democracy and justice for the people of Burma—on both sides of the border.

We can and must do more to support this courageous woman, and her work to ensure that the refugee population in Thailand is granted basic rights, including healthcare and education, for all.

ADDITIONAL STATEMENTS

A NEWSPAPER FAMILY FOR 30 YEARS

- Mr. CRAPO. Mr. President, keeping a community connected and informed is one of the most important functions of a local paper. In Cottonwood, ID, this job has been done with care and expertise by Pat Wherry and her late husband Bob for the past 30 years. In 1975, Pat and Bob took the helm of the Cottonwood Chronicle and Bob, until his death, and Pat have been serving the community of Cottonwood through their hard work and diligence ever since. Their two sons are involved in the businesses as well, each currently holding positions as editors, one at the Chronicle and the other at the Lewis County Herald. Bob passed away in 1999, but Pat has stayed with the paper, working hours that as many involved in small papers know far exceed 40 hours per week.

The Cottonwood Chronicle is one of the oldest papers in Idaho, first wearing the banner of the “Cottonwood Reporter” in 1892. It has been the Cottonwood Chronicle since around 1910. At one time, the Wherry family also owned both the Valley News in Meridian and the Lewis County Herald in Noy, but later sold the Valley News. They have devoted their time, resources and energy to keeping the people in these communities educated and involved. Editors of small papers especially serve many functions—they are the source of news and schedules of events. They are the keepers of community opinion and concerns. Pat especially is a strong and proud advocate for Cottonwood and I always appreciate her information she shares about the exciting community. I congratulate Pat and her sons Greg and Steve and wish them well as they continue in their good work.

APPROPRIATION FOR THE WORK OF LYNN ROSENTHAL

- Mr. CRAPO, Mr. President, today I recognize outgoing executive director of the National Network to End Domestic Violence, Lynn Rosenthal. Lynn began at NNEDV in 2000, when I had the wonderful opportunity to become acquainted with her. Since that time, she has worked tirelessly on behalf of victims of domestic violence nationally. In the course of the past 5 years, she has educated me and other Members of Congress about the high incidence and terrible consequences of domestic violence in the United States and has been instrumental in my becoming ever-increasingly involved in advocating for victims of this terrible crime.

Lynn began her work in her home state of Florida where her leadership and character earned her the Florida Governor’s Peace at Home Award. After working in domestic violence advocacy on a regional level, she went on to become the director of the Florida Coalition Against Domestic Violence before serving as the executive director of NNEDV.

Lynn has devoted her life to advocating for safe and nurturing communities and promoting equality. With dignity, poise, and energetic conviction, as executive director of NNEDV, Lynn has been an invaluable voice of education on domestic violence issues for Members of Congress. She speaks for those who cannot speak for themselves, those imprisoned in their homes, victims of cruelty with no way out and no hope. Her work on the Violence Against Women Act has kept it a powerful policy tool to address the injustices that so many women, children, and men face in their own homes. I am honored to have had the opportunity to work with such an incredible woman, and I wish her well as she goes to work on economic justice issues back in Florida.

CONGRATULATING GRAND VALLEY STATE UNIVERSITY ON DIVISION II NATIONAL CHAMPIONSHIP

- Mr. LEVIN. Mr. President, it gives me great pride to congratulate the Grand Valley State University football team on winning the Division II National Championship. This is the Lakers’ third championship in the past 4 years, and it crowns a perfect 13-to-0 season. I particularly salute the Lakers’ coach, Chuck Martin, who is in his second season with the team.

The Lakers’ championship victory came in a game that was thrilling to the end. After finishing the first half down 14-to-7, the Lakers fought back against Northwest Missouri State. A 4-yard touchdown run by the fourth quarter gave the Lakers their first lead of the game with just over 4 minutes left to play. Northwest Missouri mounted an impressive drive of its own, but the Lakers defense stopped the Bearcats on the 4-yard line as time expired. In this stirring finish, the Lakers showed the skill and poise of true national champions.

Grand Valley is now one of only three schools, including North Dakota State and North Alabama, that have won three or more Division II National Championships in football. And the seniors on the Lakers team have tied the NCAA record for the most wins in a 4-year period.

In Grand Valley becoming a tradition at Grand Valley. The volleyball team recently won the Division II championship. The water polo team won a national club title in November. And Mandi Long-Zamba recently won the Division II individual cross-country title as the cross-country team placed second overall.

Congratulations to all of the magnifi-cent athletes at Grand Valley State University on a tremendous year, and best of luck for continued success. Go Lakers.

TRIBUTE TO CARMEN MCCORMICK

- Mrs. LINCOLN. Mr. President, I rise today to honor the life of Carmen McCormick. She was a brave young woman, beloved by her family and friends, who dedicated her life to the nation she loved through honorable service in the U.S. Navy. Carmen’s born Class McCormick enlisted in the Navy in April of 1999 and completed her basic training at the Recruiting Training Command in Great Lakes, IL. Upon completion of basic training, she attended Gunner’s Mate “A” school, and later continued her technical training at the Naval Training Center in San Diego. Ultimately, her duty led her to the Mayport Naval Station in Jacksonville, FL.

To those who served beside her, McCormick was a tremendous asset as a talented technician and recognized expert in all aspects of ordnance handling, but she was also a trusted leader and a friend whom they came to know and love.

Tragically, she was involved in a serious automobile accident on the night of November 11, 2005. Her shipmates joined her at the hospital shortly after the accident and later joined her family in a constant vigil by her bedside, and throughout the hospital, until the moment she passed away on November 13. She would have been 26 years old next month.
Although Carmen may no longer be with us, I pray that her friends and family have found some sense of solace knowing that she was not alone at the end of her life’s journey but was surrounded by loved ones who sought to comfort her with their presence and their love. I would like to share the family’s appreciation for the U.S. Navy officials who helped everyone through the difficult issues that arose from Carmen’s end-of-life care. She had devoted herself to service and looked forward to a promising career in the Navy, and in her final moments they did everything they could to ensure she was treated with the honor and respect she deserved.

Of particular assistance and comfort to the family were Carmen’s commanding officer, LCDR Tim Sullivan, as well as Senior Chief Joseph Adamo, LT Tim Johnson, CAPT Charles King, and ADM Annette Brown. Their compassion and understanding made a tragic situation a little more bearable.

My thoughts and prayers go out to the friends and family of Carmen McCormick, particularly her parents, Michael Flanigan and Leslie Santa Maria. Although her time with us was far too short, her spirit and her love will remain in our hearts forever.

CONTRIBUTIONS OF THE SAN LUIS VALLEY

Mr. SALAZAR. Mr. President, I today recognize the extraordinary contributions of the San Luis Valley, in my home State of Colorado, to our national heritage and to the history of the West.

As a native son of the San Luis Valley, I know how hard the peoples of the region have fought to protect their traditions, their language, their art and architecture, and the stories of their ancestors. They have fought to protect treasured wilderness, sand dunes, wetlands, and mountain peaks. And they have fought to protect a rural way of life that cherishes family, faith, and hard work.

To support the stewardship efforts of the valley’s peoples, and to ensure that the national treasures of the region are preserved for generations to come, I have introduced legislation to create the Sangre de Cristo National Heritage Area in the San Luis Valley.

This bill directs the National Park Service to assist citizens, organizations, and local governments in Alamosa, Costilla, and Conejos Counties in developing a management plan to guide the continued stewardship of the region’s cultural and natural resources. Though this bill provides local communities assistance from the Federal Government, I am proud that the National Heritage Area Program rewards a consensual, locally driven approach to management rather than top-down, federally dominated approach.

This bill provides economic assistance to a region that has paid an economic price for preserving its rural way of life. The towns of San Luis and Antonito, among the oldest settlements in Colorado, have successfully preserved their moradas, plazitas, historic churches, religious celebrations, and historic documents. Other communities, such as Conejos and Costilla, are two of the four poorest in America.

The cultural and historic value of the Sangre de Cristo National Heritage Area is immeasurable. Since people first settled in the San Luis Valley over 11,000 years ago, the region has been home to Ute, Navajo, Tiwa, Tewa, Kiowa, Hispanic, and Anglo peoples, among others. The cultures, lifestyles, and cosmologies of the valley’s settlers have converged, conflicted, and coalesced into a unique heritage that has left an unmistakable imprint on the peoples who inhabit the Valley today. The region was dubbed “The Land of the Blue Sky People” in honor of the Utes, the oldest continuous residents of the valley. Today the home of Mount Blanca or Sisnaajini, the sacred mountain that, according to folklore, marks the eastern boundary of the Navajo world.

The valley is home to three National Wildlife Refuges, 15 State Wildlife Refuges, four national forests, two national monuments, 25 wilderness areas, the Great Sand Dunes National Park and Preserve. These public lands, and thousands of acres of private lands in between, are home to a rich array of plants and animals, from the pika of the alpine tundra to the pronghorn of the prairie and the sandhill cranes among the dunes.

This legislation will help protect these crown jewels of the American landscape by supporting a local, community-minded, and sustainable management. Because the best management policies come through cooperation, not coercion, this bill maintains strong protections for private property owners. The Federal funds in this bill cannot be used to purchase private property and the management plan cannot restrict the rights of property owners on their own lands.

For generations the peoples of the San Luis Valley have worked hard to be good stewards of their land and water. They have worked hard to preserve their culture and a rural way of life. And they have worked hard to create this National Heritage Area.

They are looking for our help now to protect a place so central to Colorado peoples, so emblematic of the Western landscape, and so much at the core of the American experience.

Let us honor the contributions of the San Luis Valley to our Nation’s heritage by creating the Sangre de Cristo National Heritage Area.

U.S. MILITARY PERSONNEL SERVING IN IRAQ

Mr. SANTORUM. Mr. President, today is a historic day for the people of Iraq as they go to the polls to freely elect a permanent 275-member Iraqi National Assembly. It is important to remember that these elections in Iraq would not have been possible without the bravery and sacrifice of the U.S. Armed Forces who have served and are currently serving in Iraq helping to provide the Iraqi people with the freedom and democracy they deserve.

Our service members who are serving in Iraq are promoting democracy, restoring and repairing public services, working to prevent terrorist attack, and destroying the insurgency in a country that hasn’t known freedom in decades. Today is a historic day for the people of Iraq.

One unit in particular, the 4th Civil Affairs Group, CAG, U.S. Marine Corps Reserve, based in Washington, DC, was deployed to Iraq during the January 30, 2005 elections of a temporary Iraqi National Assembly. These marines, many of whom are from my State of Pennsylvania, helped to promote democracy, restore and repair public services to the Iraqi people, and prevent terrorist attacks by insurgents. This particular unit played an active role in the election day operations in January by setting up polling locations and participating in security patrols to protect voters and voting sites and was an integral part in the United States’ battle for Fallujah. Also during its deployment, the 4th CAG worked to install new electricity transformers in the Iraqi city of Ramadi, the capital city of the al Anbar Province, also known as one of the most dangerous cities in Iraq.

Let us honor the contributions of the unit of brave marines was William Reynolds, now proudly serving as Senator Specter’s chief of staff.

One marine in particular from that unit, CPL William Cahir, has written about his experiences in Iraq. Corporal Cahir, originally from State College PA, was a journalist before September 11. After seeing the horrors of terrorist attacks that occurred in our country on that day, Bill Cahir felt compelled to serve our country and joined the Marine Corps. As part of the 4th CAG of the Marine Corps Reserve, Corporal Cahir served in Iraq.

During his deployment to Iraq, Corporal Cahir, along with other members of the 4th CAG, helped to establish a
Civil Military Operations Center in Ramadi. On election day in January in Iraq, Corporal Cahir and the 4th CAG were responsible for protecting a polling site in Ramadi.

Having returned from his deployment to Iraq, Corporal Cahir has since returned to his civilian job. As a journalist, Bill Cahir covers a multitude of stories but has since focused many of those stories on his own personal experiences in Iraq and the experiences of other service members.

In an article he wrote for The Ex-Press Times, a newspaper from Easton, PA, Mr. Cahir told the story of two service members—COL James T. Anthony, a marine reservist from Nazareth, PA, and LTC Stanley B. Smith, Jr., an Army officer with the Army’s 98th Division, Institutional Training. Both service members were on their way to Camp Taji in Baghdad to begin their deployments to Iraq.

In his article, Bill Cahir documented the sentiments of these two service members during their deployments. Colonel Anthony had recounted his observations of the training of Iraqi soldiers, “U.S. Marines, soldiers and sailors, along with their commanders, ‘d[id] a fantastic job really pushing the ball forward when it comes to training Iraqi security forces, not just in terms of numbers but in terms of efficiency and effectiveness.’”

Lieutenant Colonel Smith also recounted his experiences in Iraq when he said, “I am able to feel a sense of pride in accomplishment here in seeing real results in the form of construction that has been completed as planned and Iraqi units operating with installations that contribute to mission readiness.”

Mr. President, these stories from our soldiers are just a few more examples of the success in Iraq that our troops are contributing to. Each and every one of these service members has contributed to the promotion of democracy, the security, and the rebuilding of Iraq.

I applaud the marines of the 4th Civil Affairs Group and all of the service members who are serving or who have served our Nation in Iraq. The bravery that they have displayed and the progress they have made in Iraq is remarkable, and it needs to be told.

Aimee’s Law is named after Aimee Willard, a college senior from suburban Philadelphia who was brutally raped and murdered by a convicted murderer who was released early in Nevada and crossed State lines to kill again in Pennsylvania. Aimee’s Law, as it is known, was born out of the grief and anger that Aimee’s family felt. It is named in honor of Aimee and is considered the toughest, most effective law of its kind to date in the nation. It provides that States where a subsequence violent crime and conviction occurred. The law is designed to protect the residents of one State from the negligence of another State. The law assists States which recognize that the primary responsibility of State and local governments is to maintain public safety. Sexual predators have the highest rate of recidivism of any category of violent crime. The law simply provides that States where a subsequent violent crime occurs but because of an early release will be reimbursed for the prosecution and incarceration costs through a reduction of future Federal funds from the allocation of the original violent crime and conviction occurred. I wish to state for the record that I will not object to the “technical changes” of Aimee’s Law in H.R. 3402 as the Department of Justice assures me that the law will be implemented within six months. While I think that it is unacceptable that it has taken this long to take the appropriate steps to implement this law, I am hopeful that Aimee’s Law will finally be effective. We are in the very near future so other families do not suffer the same fate as the Williards.

TRIBUTE TO DICK FORD

Mr. TALENT. Mr. Present, today I rise to honor the accomplishments of Dick Ford, one of the most respected broadcast journalists in the St. Louis area. After more than 50 years of media service around the country, Mr. Ford will be retiring today, December 15, 2005. He will be greatly missed by viewers in the St. Louis area and in the field of journalism as a whole.

After receiving a bachelor of science degree in political science from the University of Pittsburgh and serving on active duty aboard an aircraft carrier in the Mediterranean, Dick began his professional career in 1951 and went on to work in a number of States as a reporter, newscaster, and anchor. After having established himself as a prominent journalist, Mr. Ford came to the St. Louis area where he began working at KSDK-TV. In July 1992, he joined KTVI Fox 2, from which he will retire.

In his distinguished career, Mr. Ford has been honored with the prestigious Emmy Award, among other recognitions of his journalistic talent and integrity.

The many hallmarks of his career include a training mission in an F-4 Phantom jet, live reports from Rome when Sister Philippine Duchesne was canonized, reports from submarine and from the flight deck of an aircraft carrier and travels to Saudi Arabia to report on Desert Storm.

In addition to his passion for journalism, Dick Ford is a committed father and husband. He is also passionate about the community of St. Louis. Mr. Ford currently works with the USO and the St. Patrick’s Day Parade Committee, among other St. Louis area organizations.

In his work, both as a journalist and a community leader, Dick has won the respect of his colleagues and viewers alike. I have appreciated very much Dick’s dedication and professionalism. He sought more than just the story—he wanted to get the right story. In his interviews with me, he never hesitated to ask the tough questions, but he was always fair about it.

Dick, congratulations on your many contributions to the great State of Missouri and your tremendously successful career.

TRIBUTE TO TERRY R. LITTLE

Mr. WARNER. Mr. President, I come to the floor today to recognize the service of an outstanding leader and public servant. After more than 38 years of combined military and civil service, Mr. Terry R. Little will soon retire from the Department of Defense, DOD, and move into private life.

Mr. Little is one of the most seasoned weapons acquisition program managers in the DOD. He has over 24 years of program management leadership in seven major weapon acquisition programs including the only classified missile programs, the AIM-9X Short Range Air-to-Air Missile, the Joint Direct Attack Munition, the Small Diameter Bomb, the Joint Air-to-Surface Stand-off Missile, and the Kinetic Energy Interceptor Program. Each of these weapon systems has delivered, or promises to provide, unparalleled advancements in capability at affordable costs for the defense of our Nation. His creative ingenuity, tenacious organizational drive, and superlative personal leadership directly enabled these advancements.

Mr. Little is currently the Executive Director of the Missile Defense Agency, MDA. In this capacity, he is responsible for acquisition, personnel, and administrative policy. His intellectual commitment for excellence and genuine concern for people have aided measurably to the day-to-day operation of the Agency. His professional achievements are numerous, impressive, and reflect his dedication and commitment for achieving the highest standards of professionalism and integrity in the service of the United States.
December 15, 2005

CONGRESSIONAL RECORD — SENATE

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Terry Little has devoted his adult life to improving the DOD acquisition process. He has inspired teamwork and efficiency in many venues, and he has trained the next generation of acquisition managers to continue his legacy. For these and his many other contributions, Americans owe Mr. Little a debt of gratitude for a lifetime of selfless service and for his profound contributions to our Nation and our security. Those of us in the Senate will miss his leadership and contributions. We wish him and his family all the best in the years ahead.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT RELATIVE TO THE EXPORT OF ACCELEROMETERS TO THE PEOPLE’S REPUBLIC OF CHINA’S MINISTRY OF RAILWAYS—PM 33

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with the provisions of section 1512 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261), I hereby certify that the export of 36 accelerometers to the People’s Republic of China’s Ministry of Railways, for use in a railroad track geometry measuring system, is not detrimental to the U.S. space launch industry, and that the material and equipment, including any indirect technical benefit that could result from such export, will not measurably improve the missile or space launch capabilities of the People’s Republic of China.

GEORGE W. BUSH.

THE WHITE HOUSE, December 14, 2005.

MESSAGES FROM THE HOUSE

At 9:02 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagreed to the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House: Mr. Young of Florida, Mr. Boozman, Mr. Bonilla, Mr. Frelinghuysen, Mr. Tiahrt, Mr. Wicker, Mr. Kingston, Ms. Granger, Mr. Walsh, Mr. Aderholt, Mr. Lewis of California, Mr. Murtha, Mr. Dicks, Mr. Sabo, Mr. Visclosky, Mr. Moran of Virginia, Ms. Kaptur, Mr. Edwards, and Mr. Obey.

At 11:46 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 972. An act to authorize appropriations for fiscal years 2006 and 2007 for the TraffickingVictim Protection Act of 2000, and for other purposes.

H.R. 2892. An act to amend section 255 of the National Housing Act to remove the limitation on the number of reverse mortgages that may be insured under the FHA mortgage insurance program for such mortgages.

H.R. 3508. An act to authorize improvements in the governance of the District of Columbia, and for other purposes.

H.R. 4396. An act to provide certain authorities for the Department of State, and for other purposes.

H.R. 4473. An act to reauthorize and amend the Commodity Exchange Act to promote legitimate market competition, and to reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

H.R. 4508. An act to commend the outstanding efforts in response to Hurricane Katrina by members and employees of the Coast Guard, to provide temporary relief to certain persons affected by such hurricane with respect to certain laws administered by the Coast Guard, and for other purposes.

H.R. Res. 39. Joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

The message also announced that the House has passed the following bill, without amendment:

S. 335. An act to reauthorize the Congressional Award Act.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:


H. Con. Res. 252. Concurrent resolution expressing the sense of Congress that the Government of the United States should support democracy, the rule of law, and human rights in the Republic of Nicaragua and work cooperatively with regional and international organizations to facilitate Nicaraguan efforts to establish the requisite conditions for free, fair, transparent, and inclusive presidential and legislative elections in 2006.

ENROLLED BILLS SIGNED

At 4:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 335. An act to reauthorize the Congressional Award Act.

H.R. 327. An act to allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation.

The enrolled bills were signed subsequently by the President pro tempore (Mr. Stevens).

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 2892. An act to amend section 255 of the National Housing Act to remove the limitation on the number of reverse mortgages that may be insured under the FHA mortgage insurance program for such mortgages.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, December 15, 2005, she had presented to the President of the United States the following enrolled bill:

S. 1047. An act to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation’s past Presidents and their spouses, respectively, to improve circulation of the $1 coin, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-4834. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting pursuant to law, the report of a rule entitled “Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005” received on December 2, 2005; to the Committee on Energy and Natural Resources.

EC-4835. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, a draft of proposed legislation to amend Act of August 21, 1935 to extend the authorization for the National Park System Advisory Board and for other purposes; to the Committee on Energy and Natural Resources.

EC-4836. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report entitled “Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005”: to the Committee on Energy and Natural Resources.

EC-4837. A communication from the Chief, Regulations Management, Office of Regulation Policy and Management, Department of
Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Medical: Advance Health Care Planning” (RIN2000–A3.26) received on December 8, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–8438. A communication from the Director of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Dependency and Identity Compensation: Surviving Spouse’s Rate; Payments Based on Veteran’s Entitlement to Compensation for Service-Connected Disability Rated Totally Disabled for Specified Periods Prior to Death” (RIN2000–AKL66) received on December 8, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–8439. A communication from the Regulatory Specialist, Office of the Comptroller of the Currency, transmitting, pursuant to law, the report of a rule entitled “Fair Credit Reporting Medical Information Regulations (Part 41)” (RIN1557–AC85) received on December 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–8440. A communication from the Secretary, Office of the Comptroller of the Currency, transmitting, pursuant to law, the periodic report on the national emergency with respect to Burma that was declared in Executive Order 13047 of May 20, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–8441. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Fair Credit Reporting Medical Information Regulations (Part 41)” (RIN1557–AC85) received on December 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–8442. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Importation of Whole Cuts of Boneless Beef From Japan” (Doc. No. 03–044–2) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8443. A communication from the Secretary, Office of the Chief Accountant, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled “Unsealing of Means of Conveyance and Transloading of Products” (Doc. No. 03–080–3) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8444. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Bovine Spongiform Encephalopathy: Minimal-Risk Importation of Commodities: Unsealing of Means of Conveyance and Transloading of Products” (Doc. No. 03–080–3) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8445. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Importation of Fruits and Vegetables” (Doc. No. 03–048–2) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8446. A communication from the Administrator, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Marketing and Sale of Fluid Milk in Schools” received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8447. A communication from the Under Secretary, Food, Nutrition, and Consumer Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Food Stamp Program, Reauthorization: Electronic Benefit Transfer and Retail Food Stores Provisions of the Food Stamp Reauthorization Act of 2002” to the Committee on Agriculture, Nutrition, and Forestry.

EC–8448. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Acetic Acid: Repeal of a rule entitled ‘Acetic Acid Tolerance’ (FRL7755–4) received on December 12, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8449. A communication from the Administrator, Housing and Community Facilities Programs, Department of Agriculture and Rural Development, transmitting, pursuant to law, the report of a rule entitled “Direct Single Family Housing Loans and Grants” (RIN0575–AC54) received on December 12, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8450. A communication from the Regulatory Analyst, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled “Export Inspection and Weighing Waiver for High Quality Beef Cuts in Certain Containers” (RIN0580–AA87) received on December 12, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8451. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Exception for Back to Back Computer Software Licensing Arrangements” (Notice 2005–90) received on December 5, 2005; to the Committee on Finance.

EC–8452. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Timing of Adoption of Plan Amendments as a Result of Section 401(k) Rollovers” (Rev. Proc. 2005–79) received on December 5, 2005; to the Committee on Finance.

EC–8453. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Annual Pension Plan, etc., Cost-of-Living Adjustments for 2006” (Notice 2005–75) received on December 5, 2005; to the Committee on Finance.

EC–8454. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Health Savings Accounts: Eligibility During the Grace Period” (Notice 2005–86) received on December 5, 2005; to the Committee on Finance.

EC–8455. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Amendment to ‘Withholding Foreign Partnership and Withholding Foreign Trust Agreements’” (Rev. Proc. 2005–78) received on December 5, 2005; to the Committee on Finance.

EC–8456. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Information Reporting Relating to Taxable Stock Transactions” (RIN1545–IP14–TD230) received on December 6, 2005; to the Committee on Finance.

EC–8457. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Government-Sponsored Entity Credit Hurdle and Debt Limit” (RIN0656–A20–TD135) received on December 6, 2005; to the Committee on Finance.

EC–8458. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Employee Relocation Costs” (Rev. Rul. 2005–74) received on December 5, 2005; to the Committee on Finance.

EC–8459. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Extension of Operational Date in Rev. Proc. 2005–23” (Rev. Proc. 2005–78) received on December 5, 2005; to the Committee on Finance.

EC–8460. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Annual Pension Plan, etc., Cost-of-Living Adjustments for 2006” (Notice 2005–75) received on December 5, 2005; to the Committee on Finance.

EC–8461. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Annual Pension Plan, etc., Cost-of-Living Adjustments for 2006” (Notice 2005–75) received on December 5, 2005; to the Committee on Finance.

EC–8462. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Government-Sponsored Entity Credit Hurdle and Debt Limit” (RIN0656–A20–TD135) received on December 6, 2005; to the Committee on Finance.

EC–8463. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Information Reporting Relating to Taxable Stock Transactions” (RIN1545–IP14–TD230) received on December 6, 2005; to the Committee on Finance.

EC–8464. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Information Reporting Relating to Taxable Stock Transactions” (RIN1545–IP14–TD230) received on December 6, 2005; to the Committee on Finance.

EC–8465. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Information Reporting Relating to Taxable Stock Transactions” (RIN1545–IP14–TD230) received on December 6, 2005; to the Committee on Finance.

EC–8466. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the
EC-4877. A communication from the Executive Director, U.S.-China Commission, transmitting, pursuant to law, a report on the national security implications of the U.S.-China relationship; to the Committee on Armed Services.

EC-4878. A communication from the Under Secretary of Defense for Economic Affairs, transmitting, pursuant to law, a report relating to post-liberation Iraq; to the Committee on Foreign Relations.

EC-4879. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of certain agreements other than treaties; to the Committee on Foreign Relations.

EC-4880. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Singapore; to the Committee on Finance.

EC-4881. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to France, Canada, Switzerland and the United Kingdom; to the Committee on Foreign Relations.

EC-4882. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Austria, Canada, the United Kingdom and Sweden; to the Committee on Foreign Relations.

EC-4883. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to the Republic of Korea; to the Committee on Foreign Relations.

EC-4884. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Cambodia; to the Committee on Foreign Relations.

EC-4885. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Report on the Fiscal Year 2005 Benefits Budgets; Technical Correction (FRL7999-4) received on December 5, 2005; to the Committee on Environment and Public Works.

EC-4886. A communication from the Assistant Secretary of the Army (Civil Works), Department of Defense, transmitting, pursuant to law, a report relative to the flood damage reduction project for the Turkey Creek Basin, Kansas and Missouri; to the Committee on Environment and Public Works.

EC-4887. A communication from the Assistant Secretary of the Army (Civil Works), Department of Defense, transmitting, pursuant to law, a report relative to the flood damage reduction project for the Turkey Creek Basin, Kansas and Missouri; to the Committee on Environment and Public Works.
“Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Technical Amendments to Evaporative Emissions Regulations, Dynamometer Regulation” (FRL8005-6) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4907. A communication from the Deputy Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Inclusion of Alligator Snapping Turtle (Macrolemys [=Macrochelys] temmincki) and its sister species (Chelydra spp.) in Appendix III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora” (RIN1018–AF90) received on December 12, 2005; to the Committee on Environment and Public Works.

EC–4908. A communication from the Assistant Attorney General, Department of Justice, transmitting, pursuant to law, the report of a rule entitled “Terrorist Screening Records System” received on December 12, 2005; to the Committee on the Judiciary.

EC–4909. A communication from the Office of General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled “Affirmative Action and Non-Discrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans” (RIN1220–AB24) received on December 9, 2005; to the Committee on Health, Education, Labor, and Pensions.
The following reports of committees were submitted:
By Mr. COCHRAN, from the Committee on Appropriations:


By Mr. MCCAIN, from the Committee on Indian Affairs, without amendment:
S. 1812. A bill to provide a provision relating to employees of the United States assigned to, or employed by, an Indian tribe, and for other purposes. (Rept. No. 109–130–1).

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs:


The following executive reports of committees were submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation:

“Coast Guard nomination of Capt. Michael R. Sheehan, of New York, to be Rear Admiral.”

By Ms. COLLINS for the Committee on Homeland Security and Governmental Affairs:

“Mary M. Rose, of North Carolina, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2011.”

“George W. Foresman, of Virginia, to be Under Secretary for Preparedness, Department of Homeland Security.

Nomination was reported with recommendation that it be confirmed subject to the nominee’s commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. COLEMAN:
S. 2105. A bill to amend the Internal Revenue Code of 1986 to modify the credit for nonbusiness energy property so that the amount of the credit is determined based on the amount of energy savings achieved by the taxpayer; to the Committee on Finance.

S. 2106. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to construct recycled regional brine lines in California, to authorize the Secretary to participate in the Lower Colorado River Area demonstration reclamation project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. RUSSELL: S. 2107. A bill to provide additional appropriations for the Low-Income Home Energy Assistance Act of 1981 for fiscal year 2006 and to amend the Internal Revenue Code of 1986 to provide a refundable tax credit for residential energy cost assistance, and for other purposes; to the Committee on Finance.

By Mr. CRAPO (for himself and Mr. BRAUN)
S. 2108. A bill to ensure general aviation aircraft access to Federal land and to the airspace over Federal land; to the Committee on Energy and Natural Resources.

By Mr. ENDEM (for himself, Mr. LIEBERMAN, Mr. LUGAR, Mr. DEWINE, Mr. ALLEN, Mr. BINGMAN, Mr. ALEXANDER, Mr. CHAMBLISS, Mr. BAYH, Mr. ACKERMAN, Mr. CORNYN, Mr. ISAIKSON, Mr. SMITH, Mr. LEAHY, and Mr. NELSON of Nebraska):
S. 2109. A bill to provide national innovation initiative; to the Committee on Finance.

By Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. THOMAS, and Mr. ALLARD):

S. 2110. A bill to amend the Endangered Species Act of 1973 to enhance the role of States in the recovery of endangered species and threatened species, to implement a species conservation recovery system, to establish certain recovery programs, to provide Federal financial assistance and a system of incentives to promote the recovery of species, and for other purposes; to the Committee on Finance.

By Mr. BAYH
S. 2111. A bill to amend the Internal Revenue Code of 1986 to provide a credit for small business employee training expenses, to increase the exclusion of capital gains from small business stocks to extend expensing for small businesses, and for other purposes; to the Committee on Finance.

By Mr. INOUYE:
S. 2112. A bill to provide for the establishment of programs and activities to increase influenza vaccination and to provide free vaccines; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEMINT:
S. 2113. A bill to promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks; to the Committee on Commerce, Science, and Transportation.

By Mr. TALENT:
S. 2114. A bill to establish the Confluence National Heritage Corridor in the States of Missouri and Illinois, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. STABENOW (for herself, Mr. SMITH, Mr. LUTENBERG, Mrs. MURRAY, Mr. MCCAIN, Mr. COLEMAN, and Mr. DAVENPORT):
S. 2115. A bill to amend the Public Health Service Act to improve provisions relating to “Pakinson’s” disease; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LOTT:
S. 2116. A bill to transfer jurisdiction of certain real property to the Supreme Court; considered and passed.

By Mr. FEINSTEIN:
S. 2117. A bill to clarify the circumstances under which a person born in the United States is subject to the jurisdiction of the United States, to provide for criminal penalties for forging Federal documents, to establish a National Border Neighborhood Watch Program, and to amend the Intelligence Reform and Terrorism Prevention Act of 2004 to move the sunset provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to March 31, 2006 and to combat methamphetamine abuse; to the Committee on the Judiciary.

By Mr. SUNUNU (for himself, Mrs. FEINSTEIN, Mr. CRAIO, Mr. OBAMA, Mr. MURASKI, Mr. HAGEL, and Mrs. CLINTON):
S. 2118. A bill to amend the USA PATRIOT Act to extend the sunset of certain provisions of the Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to March 31, 2006 and to combat methamphetamine abuse; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were reported, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself, Mr. REID, Mr. KOHL, Mr. FEINGOLD, Mr. AKARA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BINGMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNACK, Mr. BUNNING, Mr. BURST, Mr. CANTWELL, Mr. CARPER, Mr. CARR, Mr. CHAMBLISS, Mr. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Mr. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CORZINE, Mr. CRAIO, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Ms. DOLE, Mr. DOMENICI, Mr. DORFMAN, Mr. DURBIN, Mr. ENISI, Mr. ENZ, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREIG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mr. HINOUE, Mr. HOUVE, Mr. ISAIAKSON, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Ms. KYL, Ms. LANDRU, Mr. LUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Mrs. MURAWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REND, Mr. ROBERTS, Mr. SANTORUM, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANS, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPHRER, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUN, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN):
S. Res. 334. A resolution relative to the death of William Proxmire, former United States Senator from the State of Wisconsin considered and agreed to.

By Mr. MCCAIN (for himself, Mr. RUDEN, and Mr. LIEBERMAN):
S. Con. Res. 70. A resolution urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment of operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, to change the proposed legislation completely to remove these restrictions; to the Committee on Foreign Relations.

By Mr. AKARA (for himself, Mr. INOUYE, and Mr. SALAZAR):
S. Con. Res. 71. A concurrent resolution expressing the sense of Congress that States
should require candidates for driver’s licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual, to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 103
At the request of Mr. TALENT, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 267
At the request of Mr. CRAIG, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 382
At the request of Mr. ENSIGN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 438
At the request of Mr. BOND, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 627
At the request of Mr. HATCH, the name of the Senator from Texas (Mr. CORYN) was added as a cosponsor of S. 627, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 635
At the request of Mr. SANTORUM, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 635, a bill to amend title XVIII of the Social Security Act to improve the benefits under the medicare program for beneficiaries with kidney disease, and for other purposes.

S. 716
At the request of Mr. AKAKA, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 716, a bill to amend the United States Code, to enhance services provided by vet centers, to clarify and improve the provision of bereave-

ment counseling by the Department of Veterans Affairs, and for other purposes.

S. 737
At the request of Mr. DURENH, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 737, a bill to amend the USA PATRIOT Act to place reasonable limitations on the use of surveillance and the issuance of search warrants, and for other purposes.

S. 812
At the request of Mr. KENNEDY, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 812, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 814
At the request of Mr. ALLARD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 814, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 1014
At the request of Ms. SNOWE, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 1014, a bill to provide additional relief for small business owners ordered to active duty as members of reserve components of the Armed Forces, and for other purposes.

S. 1139
At the request of Mr. SANTORUM, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1272
At the request of Mr. NELSON of Nebraska, the names of the Senator from Rhode Island (Mr. CHAFFEE), the Senator from Montana (Mr. BURNS), the Senator from North Dakota (Mr. CONRAD) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 1272, a bill to amend title 46, United States Code, and title II of the Social Security Act to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 1312
At the request of Mr. MCCAIN, the name of the Senator from North Dakota (Mr. DURBIN) was added as a cosponsor of S. 1312, a bill to amend the provision relating to employees of the United States assigned to, or employed by, an Indian tribe, and for other purposes.

S. 1321
At the request of Mr. DURBIN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 1321, a bill to amend the Internal Revenue Code of 1986 to repeal the excise tax on telephone and other communications.

S. 1349
At the request of Mr. SMITH, the name of the Senator from Rhode Island (Mr. CHAFFEE) was added as a cosponsor of S. 1349, a bill to promote deployment of competitive video services, eliminate redundant and unnecessary regulation, and further the development of next generation broadband networks.

S. 1793
At the request of Mr. BOXER, her name was added as a cosponsor of S. 1793, a bill to provide for the expansion of Federal efforts concerning the prevention, education, treatment, and research activities related to Lyme and other tick-borne diseases, including the establishment of a Tick-Borne Diseases Advisory Committee.

S. 1379
At the request of Mr. SMITH, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Montana (Mr. BURNS) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 1379, a bill to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

S. 1797
At the request of Mr. AKAKA, the names of the Senator from Rhode Island (Mr. CHAFFEE), the Senator from Maryland (Mr. SARBANES), the Senator from Maine (Ms. SNOWE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 1797, a bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to enhance the humane treatment of nonambulatory livestock, and for other purposes.

S. 1791
At the request of Mr. SMITH, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1800
At the request of Ms. SNOWE, the names of the Senator from Oregon (Mr. WYDEN), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1811
At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1811, a bill to authorize the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the
At the request of Mr. HAGEL, the names of the Senator from Illinois (Mr. OBAMA) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 1916, a bill to strengthen national security and United States borders, and for other purposes.

At the request of Mr. HAGEL, the names of the Senator from Illinois (Mr. OBAMA) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 1917, a bill to require employers to verify the employment eligibility of their employees, and for other purposes.

At the request of Mr. SPECTER, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

At the request of Mr. NELSON of Florida, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1974, a bill to provide State and local governments with the resources needed to fund our schools of performance-enhancing drug use.

At the request of Mr. BURNS, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2038, a bill to amend the Agricultural Marketing Act of 1946 to restore the original deadline for mandatory country of origin.

At the request of Mr. SMITH, the name of the Senator from Idaho (Mr. CHAIKIN) was added as a cosponsor of S. 2079, a bill to enable the Secretary of Agriculture and the Secretary of the Interior to promptly implement recovery treatments in response to catastrophic events affecting the natural resources of Forest Service land and Bureau of Land Management land, respectively, to support the recovery of non-Federal land damaged by catastrophic events, to assist impacted communities, to revitalize Forest Service experimental forests, and for other purposes.

At the request of Mr. COCHRAN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2081, a bill to improve the safety of all-terrain vehicles in the United States, and for other purposes.

At the request of Mr. LEAHY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2082, a bill to amend the USA PATRIOT Act to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to March 31, 2006.

At the request of Mr. SUNUNU, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2082, supra.

At the request of Mr. ALLARD, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 2088, a bill to assist low-income families, displaced from their residences in the States of Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina, by establishing within the Department of Housing and Urban Development a homesteading initiative that offers displaced low-income families the opportunity to purchase a home owned by the Federal Government, and for other purposes.

At the request of Mr. COLEMAN, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 2096, a bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

At the request of Mr. BINGMAN, the name of the Senator from New Mexico (Mr. DOMENICCI) was added as a cosponsor of S. Con. Res. 16, a concurrent resolution conveying the sympathy of Congress to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Con. Res. 54, a concurrent resolution expressing the sense of Congress regarding alternative postage stamp honoring Jasper Francis Cropsey, the famous Staten Island-born 19th Century Hudson River Painter.

At the request of Mr. ORBA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Con. Res. 65, a concurrent resolution recognizing the benefits and importance of Federally-qualified health centers and their Medicaid prospective payment system.

At the request of Mr. ENSIGN, the names of the Senator from Rhode Island (Mr. CHAFEE), the Senator from Wisconsin (Mr. KOHL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Michigan (Mr. LEVIN), the Senator from Rhode Island (Mr. REED), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

AMENDMENT NO. 2646
At the request of Ms. MURKOWSKI, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of amendment No. 2646, proposed to S. 2079, an original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
By Mrs. FEINSTEIN:
S. 2106. A bill to amend the Reclamation, Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Santa Ana River Water Supply Enhancement Act of 2005.

This legislation authorizes Federal assistance through Title XVI for projects developed by local communities to reduce their dependence on water from the Colorado River. It helps California develop safer and more reliable water supplies.

Congressman GARY MILLER along with Congressmen CALVERT, DEHERR, ROYCE, COX and ROHRABACHER introduced similar legislation in the House. Their bill passed the House in October.

The projects in this bill will increase the region’s water supply by 200,000 acre-feet annually and are prototypes for providing water supplies to new communities throughout the arid Western States.

The Orange County Water District’s Groundwater Replenishment System is an innovative approach to reuse water resources within one of the most populated counties in the Nation. Seventy-two thousand acre feet of reclaimed water will be produced annually for indirect potable use. This is enough water to meet the needs of more than 300,000 people each year. This bill authorizes $53.8 million for the groundwater replenishment system, just 10 percent of the actual cost of the project.

Another project in the bill expands desalination facilities in the Chino Basin, providing a fourfold increase in the ability to desalinate groundwater resources.
supplies. The Chino Basin groundwater desalters will be the primary drinking water supply for 40,000 new homes in Riverside and San Bernardino Counties.

This legislation also authorizes $40 million to construct regional brine sewer lines that will enable our communities to safely dispose of the brine generated from the "desalted" groundwater supplies.

In order to naturally treat the regional water and remove contamination from the Santa Anna River, I am also seeking Federal support for the construction of wetlands. This concept holds the promise of efficiently improving the quality of our groundwater supplies without costly control technologies.

The creation of a Center for Technological Advancement of Membrane Technology will foster research efforts to improve membrane design and testing. Research conducted at this facility will help develop technologies to increase the stability of our water supply.

I believe the ever-growing demand for water throughout Southern California can be satisfied through local supplies. Regional watershed plans, cooperation with units of local government, may assist agencies in projects to construct regional brine lines to export the salinity imported from the Colorado River to the Pacific Ocean as identified in—

(1) the Salinity Management Study prepared by the Bureau of Reclamation and the Metropolitan Water District of Southern California; and

(2) the Southern California Comprehensive Water Reclamation and Reuse Study prepared by the Bureau of Reclamation.

(b) AGREEMENTS AND REGULATIONS. — The Secretary may enter into such agreements and promulgation of regulations as are necessary to carry out this section.

(c) COST SHARING. — The Federal share of the cost of a project to construct regional brine lines described in subsection (a) shall not exceed—

(1) 25 percent of the total cost of the project; or

(2) $40,000,000.

(d) LIMITATION. — Funds provided by the Secretary shall not be used for operation or maintenance of any project described in subsection (a).

(2) $50,000,000.

(b) AGREEMENTS AND REGULATIONS. — The table of sections in section 2 of Public Law 102-575 is further amended by inserting after the item relating to section 1634 the following:

"Sec. 1636. Prado Basin Natural Treatment System Project.

(2) the Southern California Comprehensive Water Reclamation and Reuse Study prepared by the Bureau of Reclamation.

(b) AGREEMENTS AND REGULATIONS. — The Secretary may enter into such agreements and promulgation of regulations as are necessary to carry out this section.

(c) COST SHARING. — The Federal share of the cost of a project to construct regional brine lines described in subsection (a) shall not exceed—

(1) 25 percent of the total cost of the project; or

(2) $50,000,000.

(d) LIMITATION. — Funds provided by the Secretary shall not be used for operation or maintenance of any project described in subsection (a).

(2) $50,000,000.

(b) AGREEMENTS AND REGULATIONS. — The table of sections in section 2 of Public Law 102-575 is further amended by inserting after the item relating to section 1634 the following:

"Sec. 1636. Lower Chino River area desalination demonstration and reclamation project.

(2) the Southern California Comprehensive Water Reclamation and Reuse Study prepared by the Bureau of Reclamation.

(b) AGREEMENTS AND REGULATIONS. — The Secretary may enter into such agreements and promulgation of regulations as are necessary to carry out this section.

(c) COST SHARING. — The Federal share of the cost of a project to construct regional brine lines described in subsection (a) shall not exceed—

(1) 25 percent of the total cost of the project; or

(2) $50,000,000.

(d) LIMITATION. — Funds provided by the Secretary shall not be used for operation or maintenance of the project described in subsection (a).
Mr. BAUCUS. Mr. President, today I am introducing legislation to help families bear the dramatic increase in cost for home heating bills this winter.

The bill, the Household Energy and Taxpayer Assistance Act of 2005, appropriates enough money to fully fund the Low Income Home Energy Assistance Program at its authorized level and provides for a tax credit up to $300 per family to offset home heating bills.

I cannot overstate the urgency of this legislation. This week, natural gas prices rose to record highs. On the New York Mercantile Exchange, January futures rose to $15.78 per million BTUs. Prices have more than doubled since last year.

What does that mean for the consumer?

The Energy Information Administration predicts that the average household heating with natural gas his winter will pay $231 more for fuel this winter than they did last winter. That is a 38 percent increase. Households using home heating oil can expect to pay $255 more, and propane users could see a $167 increase.

Those heating with electricity will likely see a $46 increase in the cost to heat their homes.

The bill that I am proposing includes two proposals that Congress should enact immediately to mitigate these price spikes for households.

First and foremost, my legislation fully funds the Federal Low Income Home Energy Assistance Program, or LIHEAP. Despite projections for astronomical energy costs, the conference agreement for the Labor, HHS, Education appropriations bill funds this essential home heating program at less than 50 percent of its authorized level.

And today the Senate will be considering that conference report. The current funding level for LIHEAP is unacceptable. As energy prices continue to skyrocket, we should not be short-changing this vital program.

In recent years, a growing need for help with home heating bills has consistently outstripped available funding, which has remained flat.

That is why Congress responded by increasing the authorization for the program to $5.1 billion in the recently enacted energy bill. But Congress hasn’t appropriated anywhere near as much for this program as it could.

Currently, the legislation provides only about $2.2 billion in 2006.

My bill would appropriate an additional $2.9 billion for the LIHEAP program. Funding for heating assistance in my home State of Montana would be at least $35 million, about $20 million more than last year. Montanans and other hard-working families should not have to choose between their home energy bills and affording other basic necessities.

Energy is a basic need, and without LIHEAP, many Montanans wouldn’t be able to heat their homes. That’s why I’m working to help ease the burden of high heating costs.

In addition, this bill establishes a temporary tax credit to help all taxpayers to defray a portion of their heating bills this winter. That means families can add up their home energy bills, and when tax time comes around they can get 20 percent of that expense back, from the Federal government. That credit will provide as much as $200 for an individual or $300 for a family.

The credit is also refundable. Low-income Americans who don’t owe any Federal income taxes would still get that rebate against their heating bills.

Americans can’t wait until spring for this assistance.

In its current edition, U.S. News & World Report introduces us to Mervalene Eastman, an unemployed woman on the Crow Indian Reservation. Month-to-month, $100 jumps in her heating bills last year put her behind in her bills. Medical problems forced her to leave her job as an emergency dispatcher, and then she lost natural gas service.

Things are so tough she sometimes needed to use her electric oven for heat, especially on cold nights. I am deeply troubled by the thought that more Americans will go without heat this winter. I am concerned families will face a choice between food on their table or heat during the night. They should not have to make that decision. We should pass this legislation and give needy families an early present this holiday.

Now is the time to act, and I urge my colleagues to join me helping to provide this much needed relief.

By Mr. ENSIGN (for himself, Mr. LIEBERMAN, Mr. LUGAR, Mr. DEWINE, Mr. ALLEN, Mr. BINGHAM, Mr. ALEXANDER, Mr. CHAMBLISS, Mr. BAYH, Mr. NELSON of Florida, Mr. KOHL, Mr. CORNYN, Mr. LEAHY, and Mr. SMITH, Mr. LEAHY, and Mr. NELSON of Nebraska):

S. 2109. A bill to provide national innovation initiative; to the Committee on Finance.

Mr. ENSIGN. Mr. President, I rise today to discuss important new innovation legislation that will address concerns about our country and our ability to compete in the global marketplace.

Today, Senator LIEBERMAN and I introduce the National Innovation bill with bipartisan support from Senator LUGAR, Senator DEWINE, Senator BINGHAM, Senator ALLEN, Senator ALEXANDER, Senator CHAMBLISS, Senator BAYH, Senator BILL NELSON, Senator KOHL, Senator CORNYN, Senator ISAKSON, Senator BEN NELSON Senator LEAHY and Senator SMITH as original cosponsors. We encourage all of our colleagues to join us in this important effort.

Today the World is becoming dramatically more interconnected and competitive. In order to remain globally competitive, the United States must continue to lead the world’s innovation. Innovation fosters the new ideas, technologies, and processes that lead to better jobs, higher wages, and a higher standard of living.

Unfortunately, in the disciplines that foster innovation in the 21st Century—science, technology, engineering, and mathematics—America is steadily losing its global edge.

The trouble signs are numerous: Less than 6 percent of high school seniors plan to pursue engineering degrees down from 36 percent from a decade ago.

In 2000, only 17 percent of undergraduate degrees were in the United States were in the hard sciences.

In the same year 56 percent of China’s undergraduate degrees were in the hard sciences.

Next year, China will likely produce six times the number of engineers that we will graduate in the United States.

We must address these long-term competitive challenges by addressing three primary areas of importance to maintaining and improving United States’ innovation in the 21st Century: 1. Increasing research investment. 2. Increasing science and technology talent. And 3. Developing an innovation infrastructure.

I am a fiscal conservative, and current Federal budget constraints will require prioritization of spending. New programs must be funded through existing funds or through identifiable funding offsets whenever possible. I look forward to working with Senator LIEBERMAN and the other cosponsors in this effort.

Increased support of basic research through should be a national priority. Our bill would increase the national commitment to basic research by nearly doubling research funding for the National Science Foundation (NSF) by FY 2011. The National Science Foundation plays a critical role in underwriting basic research at colleges, universities, and other institutions throughout our nation.

NSF supported basic research in chemistry, physics, nanotechnology, and semiconductor manufacturing has brought about some of the most significant innovations of the last 20 years. For example, the World Wide Web, magnetic resonance imaging and fiber optics technology all emerged through basic research projects that received NSF funding.

Because our nation’s long-term future economic strength depends in large part on the support we give to basic research projects now, the National Innovation bill also establishes the Innovation Acceleration Grants Program which encourages Federal agencies funding research in science, technology, engineering, and mathematics to allocate at least 3 percent of
their Research and Development (R&D) budgets to grants directed toward high-risk frontier research.

Three percent of overall R&D budgets from federal agencies may not seem like a lot, but this is an important starting point. Although our bill does not specifically require it, I encourage federal agencies engaged in R&D to dedicate an even greater percentage of their budgets to basic research.

Along with strategic investment in the innovation economy, the Federal Government also needs to examine various barriers that impede innovation in the United States.

Our bill instructs the National Academy of Sciences to study factors such as tort litigation that may impede American businesses from engaging in innovation risk-taking and provide recommendations on how best to address these issues. Litigation, taxation, and the substantial costs of regulatory compliance impact innovation and need to be examined.

Innovation must be a major priority as the United States looks to retain and strengthen its economic leadership and national security in the 21st Century. The National Innovation Act will help ensure that the Federal Government does exactly that by increasing research investment, increasing science and technology talent, and developing an innovation infrastructure.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 2109

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “National Innovation Act of 2005”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—INNOVATION PROMOTION

Sec. 101. President’s Council on Innovation.
Sec. 102. Innovation acceleration grants.
Sec. 103. A national commitment to basic research.
Sec. 104. Regional economic development.
Sec. 105. Development of advanced manufacturing systems.
Sec. 106. Study on service science.

TITLE II—MODERNIZATION OF SCIENCE, EDUCATION, AND HEALTHCARE PROGRAMS

Subtitle A—Science and Education
Sec. 201. Graduate fellowships and graduate traineeships.
Sec. 202. Professional science master’s degree programs.
Sec. 203. Increased support for science education through the National Science Foundation.
Sec. 204. Innovation-based experiential learning.

Subtitle B—21st Century Healthcare System
Sec. 211. Sense of Congress regarding 21st century healthcare system.

TITLE III—INCENTIVES FOR ENCOURAGING INNOVATION

Subtitle A—Research Credits
Sec. 301. Permanent extension of research credit.
Sec. 302. Increased rates of alternative incremental credit.
Sec. 303. Alternative simplified credit for qualified research expenses.

Subtitle B—Health and Education
Sec. 311. Study and report on catastrophic healthcare.
Sec. 312. Lifelong learning accounts.

Subtitle C—Savings and Investments
Sec. 321. Regulations relating to private foundation support of innovation and economic development.
Sec. 322. Advisory group regarding valuation of intangibles.

TITLE IV—DEPARTMENT OF DEFENSE MATTERS

Subtitle A—Defense Research and Education
Sec. 401. Revitalization of frontier and multidisciplinary research.
Sec. 402. Enhancement of education.

Subtitle B—Defense Advanced Manufacturing
Sec. 411. Manufacturing research and development.
Sec. 412. Transition of transformational manufacturing processes and technologies to the defense manufacturing base.
Sec. 413. Manufacturing technology strategies.
Sec. 414. Planning for adoption of strategic innovation.

Subtitle C—Report.
Sec. 415. Report.
Sec. 416. Authorization of appropriations.

TITLE V—JUDICIARY AND OTHER MATTERS

Sec. 501. Sense of Congress on retaining high-tech talent in the United States.
Sec. 502. Study on barriers to innovation.
Sec. 503. Sense of Congress on patent reform.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.—Congress makes the following findings:

(1) The United States is the most innovative Nation in the world. Since our Nation’s founding, exploration, opportunity, and discovery have remained essential to fulfilling our Nation’s strategic economic and political objectives.

(2) In the 21st century, a well-educated and trained workforce, investment in research, and development, and a regulatory and physical infrastructure that supports innovators are essential to ensuring that the United States continues to lead the global economy on innovation.

(3) America’s future economic and national security will largely depend on the creativity and commitment of our Nation to unleash its innovation capacity.

(4) The world has become dramatically more interconnected and competitive. Cutting edge research, world-class education, and highly skilled labor pools are no longer within the sole purview of the United States.

(5) The United States investment in basic research is currently insufficient to meet the challenges we face.

(6) Federal support for basic research in the physical sciences has consistently lagged behind that given to the life sciences in recent years.

(7) Traditional measurements of innovation capacity focused solely on inputs, such as research and development spending, number of patents and value of physical infrastructure. The traditional measurements are necessary but are not sufficient metrics for innovation in the 21st century’s knowledge economy.

(b) Purposes.—The purposes of this Act are to—

(1) make innovation a fundamental economic priority for the United States;
(2) create the most fertile policy environment for innovation to occur;
(3) develop greater numbers of American scientists, mathematicians, and engineers;
(4) enhance the quality of math and science education at all levels;
(5) increase the Federal Government’s investment in basic research, especially in the physical sciences;
(6) direct greater funding toward multidisciplinary and frontier research where tomorrow’s innovations are most likely to occur;
(7) secure a strong advanced manufacturing base in the United States to ensure that as innovations occur, America is poised to reap the benefits via the creation of new jobs and investment; and
(8) examine both the incentives for, and barriers to, innovation to better understand what additional policy changes are warranted.

SEC. 3. DEFINITIONS.

In this Act:

(1) CONGRESSIONAL DEFENSE COMMITTEES.—The term “congressional defense committees” has the meaning given in section 101(a)(16) of title 10, United States Code.

(2) DEFENSE MANUFACTURING BASE.—The term “defense manufacturing base” includes any supplier of the Department of Defense, including a supplier of raw materials.

(3) EXECUTIVE AGENCY.—The term “Executive agency” means the head of the Federal Government.

(4) EXTENDED PRODUCTION ENTERPRISE.—The term “extended production enterprise” means a system in which key entities in the manufacturing chain, including entities engaged in product design and development, manufacturing, sourcing, distribution, and users, are linked together through information technology and other means to promote efficiency and productivity.

(5) INNOVATION.—The term “innovation” means the intersection of invention and insight leading to the creation of social and economic value, including through efforts to meet fundamental technology challenges and involving multidisciplinary work and a high degree of novelty.

(6) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—The term “Manufacturing Extension Partnership Program” means the Manufacturing Extension Partnership Program of the Department of Commerce.

(7) MANUFACTURING TECHNOLOGY PROGRAM.—The term “Manufacturing Technology Program” means the Manufacturing Technology Program under section 2521 of title 10, United States Code.

(8) PROFESSIONAL SCIENCE MASTERS PROGRAM.—The term “professional science masters program” means a graduate degree program designed to provide education and training that extends science training to strategic planning and business management and focuses on
multidisciplinary specialties such as business and information technology (IT), biology and IT (bioinformatics), and computational chemistry.

(9) NEW INNOVATION HOT SPOTS DEFINED.—The term ‘‘regional innovation hot spots’’ means regions that are defined by a high degree of innovation and the availability of talent, infrastructure necessary to create and sustain such innovation.

(10) SERVICE SCIENCE.—The term ‘‘service science’’ refers to curricula, research programs, and training regimens, including service sciences, management, and engineering (SSME) programs, that exist or that are being developed to apply technology, organizational process management, and industry-specific knowledge to solve complex problems.

(11) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term ‘‘Small Business Innovation Research Program’’ has the meaning given that term in section 2500(11) of title 10, United States Code.

(12) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The term ‘‘Small Business Technology Transfer Program’’ has the meaning given that term in section 2500(12) of title 10, United States Code.

(13) SSME.—The term ‘‘SSME’’ means the discipline known as service sciences, management, and engineering that—

(A) applies scientific, engineering and management disciplines to tasks that one organization performs beneficially for others, generally as part of the services sector of the economy; and

(B) integrates computer science, operations research, industrial engineering, business and management sciences, and social and legal sciences, in order to encourage innovation in how organizations create value for customers and shareholders that could not be achieved through such disciplines working in isolation.

TITLE I—INNOVATION PROMOTION

SEC. 101. PRESIDENT’S COUNCIL ON INNOVATION.

(a) IN GENERAL.—The President shall establish a President’s Council on Innovation (in this section referred to as the ‘‘Council’’). (b) DUTIES.—(1) The Council’s duties shall include—

(1) monitoring implementation of legislative proposals and initiatives for promoting innovation in science, technology, and industry, including those to improve innovation through education, research, funding, taxation, immigration, trade, and education that are proposed in this and other Acts;

(2) consultation with the Director of the Office of Management and Budget, developing a process for using metrics to assess the impact of existing and proposed policies and rules that affect innovation capabilities in the United States;

(3) identifying opportunities and making recommendations for the heads of executive agencies to improve innovation, monitoring, and reporting on the implementation of such recommendations;

(4) developing metrics for measuring the progress of the Federal Government with respect to improving conditions for innovation, including through talent development, investment, and infrastructure improvements; and

(5) submitting an annual report to the President and Congress on such progress.

(c) MEMBERSHIP AND COORDINATION.—

(1) MEMBERS.—The Council shall be composed of the Secretary or head of each of the following:

(A) The Department of Commerce.

(B) The Department of Education.

(C) The Department of Energy.

(E) The Department of Health and Human Services.

(F) The Department of Homeland Security.

(G) The Department of Labor.

(H) The Defense.

(I) The National Aeronautics and Space Administration.


(K) The National Science Foundation.

(L) The Office of the United States Trade Representative.

(M) The Office of Management and Budget.

(N) The Office of Science and Technology Policy.

(2) CHAIRPERSON.—The Secretary of Commerce shall serve as chairperson of the Council.

(3) COORDINATION.—The chairperson of the Council shall ensure appropriate coordination between the Council and the National Economic Council and the National Security Council.

(4) DEVELOPMENT OF INNOVATION AGENDA.—

(a) IN GENERAL.—The Council shall develop a comprehensive agenda for strengthening the innovation capabilities of the Federal Government and State governments, academia, and the private sector in the United States.

(b) DUTIES.—(1) The Council shall perform the following duties:

(i) The Council shall determine the Federal agenda required by paragraph (1) shall be developed.

(ii) The Council shall determine the appropriate representatives of the private sector, scientific organizations, and academic organizations.

(2) IN GENERAL.—The Council shall determine the Federal agenda required by paragraph (1) shall be developed.

(c) DEVELOPMENT OF INNOVATION AGENDA.—

(1) GRANT PROGRAM.—The President shall establish a grant program, to be known as the ‘‘Innovation Acceleration Grants Program’’, to support the United States. Priority in the awarding of grants shall be given to projects that meet fundamental technology challenges and that involve multi-disciplinary work and a high degree of novelty.

(b) AWARDING OF GRANTS THROUGH DEPARTMENTS AND AGENCIES.—(1) FUNDING GOALS.—The President shall ensure that it is the goal of each Executive agency that finances research in science, mathematics, engineering, and technology to allocate not less than 2 percent of the agency’s total annual research and development budget to fund grants under the Innovation Acceleration Grants Program.

(2) ADMINISTRATION.—(A) The Director of the Office of Science and Technology Policy shall, in consultation with the appropriate field of the National Science Foundation, submit to Congress a comprehensive annual plan that describes how the funds authorized in this section that satisfies all of the metrics developed pursuant to subparagraph (B), may be renewed once for a period not to exceed 3 years. Additional renewals may be considered only if the head of the Executive agency makes a specific finding that the program being funded involves a significant technology advance that requires a longer time-frame to complete critical research, and the research is a significant component of the metrics developed pursuant to subparagraph (B).

(b) INCREASED FUNDING FOR NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for the purpose of doubling research funding the following amounts:

(1) $5,440,000,000 for fiscal year 2007.

(2) $6,440,000,000 for fiscal year 2008.

(3) $7,280,000,000 for fiscal year 2009.

(4) $8,120,000,000 for fiscal year 2010.

(5) $8,960,000,000 for fiscal year 2011.

SEC. 102. REGIONAL ECONOMIC DEVELOPMENT.

(a) GRANT PROGRAM.—(1) FUNDING GOALS.—The President shall establish a grant program, to be known as the ‘‘Innovation Acceleration Grants Program’’, to support the United States. Priority in the awarding of grants shall be given to projects that meet fundamental technology challenges and that involve multi-disciplinary work and a high degree of novelty.

(b) AWARDING OF GRANTS THROUGH DEPARTMENTS AND AGENCIES.—(1) FUNDING GOALS.—The President shall ensure that it is the goal of each Executive agency that finances research in science, mathematics, engineering, and technology to allocate not less than 2 percent of the agency’s total annual research and development budget to fund grants under the Innovation Acceleration Grants Program.

(b) ADMINISTRATION.—(A) The Director of the Office of Science and Technology Policy shall, in consultation with the appropriate field of the National Science Foundation, submit to Congress a comprehensive annual plan that describes how the funds authorized in this section that satisfies all of the metrics developed pursuant to subparagraph (B), may be renewed once for a period not to exceed 3 years. Additional renewals may be considered only if the head of the Executive agency makes a specific finding that the program being funded involves a significant technology advance that requires a longer time-frame to complete critical research, and the research is a significant component of the metrics developed pursuant to subparagraph (B).

(b) INCREASED FUNDING FOR NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for the purpose of doubling research funding the following amounts:

(1) $5,440,000,000 for fiscal year 2007.

(2) $6,440,000,000 for fiscal year 2008.

(3) $7,280,000,000 for fiscal year 2009.

(4) $8,120,000,000 for fiscal year 2010.

(5) $8,960,000,000 for fiscal year 2011.

SEC. 103. A NATIONAL COMMITMENT TO BASIC RESEARCH.

(a) PLAN FOR INCREASED RESEARCH.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Science Foundation shall submit to Congress a comprehensive, multiyear plan that describes how the funds authorized in subsection (b) shall be used. Such plan shall be developed with a focus on basic research in physical science and engineering to optimize the United States economy as a global competitor and leader in productive innovation.

(b) INCREASED FUNDING FOR NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for the purpose of doubling research funding the following amounts:

(1) $5,440,000,000 for fiscal year 2007.

(2) $6,440,000,000 for fiscal year 2008.

(3) $7,280,000,000 for fiscal year 2009.

(4) $8,120,000,000 for fiscal year 2010.

(5) $8,960,000,000 for fiscal year 2011.

SEC. 104. REGIONAL ECONOMIC DEVELOPMENT.

(a) DEVELOPMENT OF FUNDING STRATEGY.—(1) IN GENERAL.—The Assistant Secretary for Economic Development of the Department of Commerce shall submit Federal programs that support local economic development and prepare and implement a strategy to focus funding on initiatives that improve the economic development of the United States.

(b) INCREASED FUNDING FOR NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for the purpose of doubling research funding the following amounts:

(1) $5,440,000,000 for fiscal year 2007.

(2) $6,440,000,000 for fiscal year 2008.

(3) $7,280,000,000 for fiscal year 2009.

(4) $8,120,000,000 for fiscal year 2010.

(5) $8,960,000,000 for fiscal year 2011.

SEC. 105. RECOMMENDATIONS ON RESEARCH AND DEVELOPMENT FUNDING.—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a comprehensive annual plan that describes how the funds authorized in subsection (b) shall be used. Such plan shall be developed with a focus on basic research in physical science and engineering to optimize the United States economy as a global competitor and leader in productive innovation.

(b) INCREASED FUNDING FOR NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for the purpose of doubling research funding the following amounts:

(1) $5,440,000,000 for fiscal year 2007.

(2) $6,440,000,000 for fiscal year 2008.

(3) $7,280,000,000 for fiscal year 2009.

(4) $8,120,000,000 for fiscal year 2010.

(5) $8,960,000,000 for fiscal year 2011.

SEC. 106. RECOMMENDATIONS ON RESEARCH AND DEVELOPMENT FUNDING.—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a comprehensive, multiyear plan that describes how the funds authorized in subsection (b) shall be used. Such plan shall be developed with a focus on basic research in physical science and engineering to optimize the United States economy as a global competitor and leader in productive innovation.
the Department of Commerce shall develop metrics to measure the success of Federal programs in supporting and promoting innovation at the local community level while minimizing bureaucracy and overhead expenses.

(c) PROMOTION OF ECONOMIC DEVELOPMENT OPPORTUNITIES.—The Assistant Secretary for Economic Development of the Department of Commerce should work with organizations focused on economic development to highlight opportunities for such organizations to serve communities through grants for economic development and investment in companies pursuing innovation.

(d) REGIONAL INNOVATION HOT SPOTS.—

(1) PROMOTION OF REGIONAL INNOVATION HOT SPOTS.—The Secretary for Technology of the Department of Commerce shall coordinate activities focused on promoting innovation through the development of regional innovation hot spots.

(2) GUIDE TO DEVELOPING SUCCESSFUL REGIONAL INNOVATION HOT SPOTS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary for Commerce, in consultation with representatives of regional innovation hot spots, shall publish a report, to be titled the “Guide to Successful Regional Innovation Hot Spots”, that examines successful regional innovation hot spots and includes recommendations for establishing and fostering regional innovation hot spots.

(B) CONTENT.—The report required under subparagraph (A) shall—

(i) include information on the evaluation of human capital;

(ii) include information on the role of sponsoring institutions, such as universities, nonprofit organizations, and laboratories, in establishing and fostering regional innovation hot spots;

(iii) include information on the role of State and local government leaders, leaders in the research and business communities, and community organizations in establishing and fostering regional innovation hot spots;

(iv) discuss the importance of collaboration by public and private sector leaders;

(v) identify sources of funding for these activities within Federal, State, and local government and private sector; and

(vi) include recommendations for developing strategic plans to stimulate innovation, including recommendations relating to knowledge and commercialization, the support of regional entrepreneurship and increased innovation within existing regional firms, and the linking of primary institutions engaged in the innovation process.

(3) REGIONAL INNOVATION HOT SPOT METRICS.—

(A) DEVELOPMENT OF METRICS.—In conjunction with publishing the report required under paragraph (2), the Secretary for Commerce shall develop the following sets of metrics:

(i) Metrics to be considered for identifying potential regional innovation hot spots (in this subsection referred to as “identifying metrics”).

(ii) Metrics to be considered for evaluating the impact and effectiveness of established regional innovation hot spots (in this subsection referred to as “evaluation metrics”).

(B) THE UNDER SECRETARY FOR COMMERCE.—The Under Secretary for Commerce of Technology shall use the identifying metrics to conduct biannual assessments of potential regional clusters and shall use the evaluation metrics to assess the impact and effectiveness of established regional innovation hot spots in improving the regional economy and regional job market. The Under Secretary for Commerce shall also assess the cost effectiveness of operating within each regional hot spot. The Under Secretary shall report the biannual assessments to Congress.

SEC. 105. DEVELOPMENT OF ADVANCED MANUFACTURING SYSTEMS.

(a) RESEARCH AND DEVELOPMENT.—The Director of the National Institute of Standards and Technology shall support research and development in collaboration with entities engaged in the advanced manufacturing sector, to supplement and support work in the private sector on advanced manufacturing systems designed to improve productivity and efficiency and to create competitive advantages for United States businesses. These research and development activities should focus on the following:

(1) Supporting industry efforts to develop innovative, state-of-the-art manufacturing processes, advanced technologies through interoperable standards, and related concepts, including—

(A) advanced distributed and desktop manufacturing linked to and made compatible with the extended production enterprise system described in paragraph (2);

(B) non-contact quality inspection processes linked to and made compatible with the extended production enterprise system;

(C) small lot manufacturing processes that are—

(i) as cost-effective as mass production processes; and

(ii) linked to and compatible with the extended production enterprise system; and

(D) the use of state-of-the-art materials and processes at nanoscale and higher.

(2) Supporting industry efforts to develop an extended production enterprise system that integrates key entities, including entities engaged in product design and development, manufacturing, sourcing, distribution, and user entities, including through the development of—

(A) interoperable software and standards designed to maximize the compatibility of the design, modeling and manufacturing stages of the manufacturing process; and

(B) supply chain software.

(b) COORDINATION OF ACTIVITIES.—The Director of the National Institute of Standards and Technology shall coordinate activities under subsection (a) with activities under—

(1) the Small Business Innovation Research Program;

(2) the Small Business Technology Transfer Program; and

(3) the Manufacturing Technology Program of the Department of Defense.

(c) TESTING.—The Director of the National Institute of Standards and Technology shall support the work of entities and organizations from the industrial sector in developing prototypes and testing areas for testing and refining, in actual production conditions, the processes, technologies, and extended production enterprise system described in subsection (a)(3) in order to maximize productivity gains and cost efficiencies.

(d) DEVELOPMENT OF STANDARDS.—The Director of the National Institute of Standards and Technology, in coordination with entities and organizations from the industrial sector and the Manufacturing Technology Program, shall develop standards to be used as manufacturing performance criteria to accelerate the adoption of improvements and innovative processes and protocols developed under subsection (a).

(e) PILOT TEST BEDS OF EXCELLENCE.—

(1) ESTABLISHMENT.—The Director of the National Institute of Standards and Technology shall support pilot test beds of excellence pursuant to the competition set forth in subsection (a)(3) such as nanotechnology, to be used by the public and private sector. The test beds of excellence shall focus on production development, particularly the invention, prototyping, and engineering development stages of the manufacturing process.

(2) REVIEW OF FUNDED TEST BEDS.—Within 3 years of the start of Federal funding for any test bed of excellence pursuant to this section, the Secretary shall use the criteria established in paragraph (2) and any additional review metrics that the Secretary determines appropriate to assess the performance of the federally funded test bed of excellence. If any test bed of excellence fails to satisfy any of the performance metrics will be ineligible for additional Federal funding.

(f) MANUFACTURING EXTENSION PARTNERSHIP PROGRAMS.—The Director of the National Institute of Standards and Technology shall ensure that the Manufacturing Extension Partnership program develops and carries out programs under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for the purpose of carrying out activities under this section the following amounts:

(1) $30,000,000 for fiscal year 2007.

(2) $40,000,000 for fiscal year 2008.

(3) $50,000,000 for fiscal year 2009.

(4) $80,000,000 for fiscal year 2010.

(5) $100,000,000 for fiscal year 2011.

SEC. 106. STUDY ON SERVICE SCIENCE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that, in order to strengthen the competitiveness of United States enterprises and institutions and to prepare the people of the United States for high-wage, high-skill employment, the Federal Government should better understand and respond strategically to the emerging vocation and learning discipline known as service science.

(b) STUDY.—Not later than 270 days after the date of the enactment of this Act, the Director of the National Science Foundation shall conduct a study and report to Congress regarding how the Federal Government should support, through integration, and training, the new discipline of service science.

(c) OUTSIDE RESOURCES.—In conducting the study, the National Science Foundation shall—

(C) Outside Resources.—The study may include, as relevant, experts from outside the Federal Government, non-profit organizations, foundations, national laboratories, universities, industry, and professional organizations.
TITLE II—MODERNIZATION OF SCIENCE, EDUCATION, AND HEALTHCARE PROGRAMS

Subtitle A—Science and Education

SEC. 201. GRADUATE FELLOWSHIPS AND GRADUATE TRAINEESHIP PROGRAMS.

(a) GRADUATE RESEARCH FELLOWSHIP PROGRAM.—

(1) IN GENERAL.—During the 5-year period beginning on the date of the enactment of this Act, the Director of the National Science Foundation shall expand the Graduate Research Fellowship Program of the Foundation to additional 250 fellowships under the Graduate Research Fellowship Program during each such fiscal year.

(b) INTEGRATIVE GRADUATE EDUCATION AND RESEARCH TRAINEESHIP PROGRAM.—

(1) IN GENERAL.—During the 5-year period beginning on the date of the enactment of this Act, the Director of the National Science Foundation shall expand the Integrative Graduate Education and Research Traineeship Program of the Foundation so that an additional 1,250 United States citizens are awarded grants under such program during each such fiscal year.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated, there are authorized to be appropriated $54,000,000 for each of the fiscal years 2007 through 2011 to provide an additional 250 fellowships under the Graduate Research Fellowship Program during each such fiscal year.

SEC. 202. PROFESSIONAL SCIENCE MASTER’S DEGREE PROGRAMS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—In this section, the term ‘‘institution of higher education’’ has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(b) CLEARINGHOUSE.—

(1) DEVELOPMENT.—From amounts appropriated under subsection (d), the Director of the National Science Foundation shall establish a clearinghouse, in collaboration with 4-year institutions of higher learning, industries, and Federal agencies that employ science-trained personnel, to share program elements used in successful professional science master’s degree programs.

(2) AVAILABILITY.—The Director of the National Science Foundation shall make the clearinghouse of program elements developed under paragraph (1) available to institutions of higher education that are developing professional science master’s degree programs.

(c) PILOT PROGRAMS.—

(1) PROGRAM AUTHORIZED.—From amounts appropriated under subsection (d), the Director of the National Science Foundation shall award grants for pilot programs to 4-year institutions of higher education to facilitate the incorporation or improvement of professional science master’s degree programs.

(2) APPLICATION.—A 4-year institution of higher education desiring a grant under this section shall submit an application at such time, in such manner, and accompanied by such information as the Director of the National Science Foundation may require. The application shall include—

(A) a description of the professional science master’s degree program that the institution of higher education will implement;

(B) the amount of funding from non-Federal sources, including from private industries, that the institution of higher education shall use to support the professional master’s degree program; and

(C) an assurance from the institution of higher education shall encourage students in the professional science master’s degree program to apply for Federal assistance available to such students, including applicable graduate fellowships and student financial assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

SEC. 203. INCREASED SUPPORT FOR SCIENCE EDUCATION THROUGH THE NATIONAL SCIENCE FOUNDATION.

There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2007 and such sums as may be necessary for each succeeding fiscal year.
SEC. 303. ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES. (a) IN GENERAL.—Subsection (c) of section 41 of the Internal Revenue Code of 1986 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph: 

“(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

“(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

“(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

“(1) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

“(2) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

“(C) ELECTION.—An election under this paragraph may be made for any taxable year to which an election under paragraph (4) applies.

“(D) TRANSITION RULE.—In the case of an election under section 41(c)(4)(B) of the Internal Revenue Code of 1986 (relating to election to be made by adding at the end the following: “An election under this paragraph may be made for any taxable year to which an election under paragraph (4) applies.”).

“(E) COORDINATION WITH ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

“(1) IN GENERAL.—Section 41(c)(4)(B) of the Internal Revenue Code of 1986 (relating to election) is amended by adding at the end the following: “An election under this paragraph may be made for any taxable year to which an election under paragraph (4) applies.”.

“(2) TRANSITION RULE.—In the case of an election under section 41(c)(4)(B) of the Internal Revenue Code of 1986 (relating to election to be made by adding at the end the following: “An election under this paragraph may be made for any taxable year to which an election under paragraph (4) applies.”).

“(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable to taxable years beginning after the date of the enactment of this Act.

Subtitle B—Health and Education

SEC. 311. STUDY AND REPORT ON CATASTROPHIC HEALTHCARE. (a) STUDY.—The Secretary of Health and Human Services and the Secretary of Labor (in this subsection referred to as the “Secretary”) shall conduct a study to explore innovative mechanisms for reducing costs associated with catastrophic healthcare events and costs associated with chronic disease. The Secretaries shall work with healthcare providers, major employers, small employers, health plans, and other interested private and public sector entities to develop a consensus regarding potential innovative methods for reducing costs associated with catastrophic healthcare events and costs associated with chronic disease. The Secretaries shall submit to the Committees on Finance of the Senate and the House of Representatives a report on the results of the study conducted under subsection (a), together with such recommendations for legislative action as the Secretaries determine to be appropriate.

SEC. 312. LIFELONG LEARNING ACCOUNTS. (a) STUDY.—The Secretary of the Treasury, in collaboration with the Secretary of Labor and the Secretary of Education, shall conduct a study with recommendations for establishing lifelong accounts which would be exempt from taxation under the Internal Revenue Code of 1986 and from which funds could only be used for educational or training purposes. Such study shall consider whether individuals should be allowed to transfer to such an account, without incurring tax liability or penalties, funds which are—

“(1) held in accounts established under a plan described in section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986; and

“(2) held in certain education programs under section 529 of such Code.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit to Congress a report on the results of the examina-

Subtitle C—Savings and Investments

SEC. 321. REGULATIONS RELATING TO PRIVATE FOUNDATION SUPPORT OF INNOVATIONS IN ECONOMIC DEVELOPMENT. The Secretary of the Treasury or the Secretary’s delegate shall as soon as practicable—

“(A) provide investors with an improved method for assessing the impact intangibles have on the accuracy of a company’s financial picture; and

“(B) support industry trade associations in efforts to adopt guidelines for intangibles appropriate to particular industry sections; and

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated—

“(A) $36,000,000 for purposes of carrying out this subsection, of which—

“(1) $10,000,000 shall be available in each such fiscal year for additional participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program; and

“(2) $26,000,000 shall be available in each such fiscal year for the National Defense Science and Engineering Graduate Fellowships.

SEC. 401. REVITALIZATION OF FRONTIER AND MULTIDISCIPLINARY RESEARCH. It shall be the goal of the Department of Defense to allocate at least 3 percent of the total Department to support research and development in science and technology. Of this amount, it shall be the goal of the Department of Defense to allocate at least 20 percent to basic research.

SEC. 402. ENHANCEMENT OF EDUCATION. (a) SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) SCHOLARSHIPS.—

Sec. 402. ENHANCEMENT OF EDUCATION. (a) SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) SCHOLARSHIPS.—


(2) Expansion of Program.—The Secretary of Defense shall—

“(A) expand the program by utilizing amounts authorized to be appropriated by subsection (a), increase the number of participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1105 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 in each of fiscal years 2007 through 2011—

“(1) by an additional 160 participants pursing doctoral degrees in each such fiscal year; and

“(2) by an additional 60 participants pursing masters degrees in each such fiscal year.

(3) Authorization of Appropriations.—There is hereby authorized to be appropriated—

“(A) $36,000,000 for each of fiscal years 2007 through 2011 for purposes of carrying out this subsection, of which—

“(1) $10,000,000 shall be available in each such fiscal year for additional participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program; and

“(2) $26,000,000 shall be available in each such fiscal year for additional participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program; and

(b) NATIONAL DEFENSE SCIENCE AND ENGINEERING GRADUATE FELLOWSHIPS.—
(1) **EXPANSION OF PROGRAM.**—The Secretary of Defense shall, utilizing amounts authorized to be appropriated by paragraph (2), increase the number of participants in the National Defense Science and Engineering Graduate (NDSEG) fellowship program in each of fiscal years 2007 through 2011 by an additional 200 participants in each such fiscal year.

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There is hereby authorized to be appropriated to the Department of Defense for each of fiscal years 2007 through 2011 the amount of $45,000,000 for purposes of carrying out this subsection.

(c) **TECHNICAL TRAINERS.**—

(1) **PROGRAM REQUIRED.**—The Secretary of Defense shall, utilizing amounts authorized to be appropriated by paragraph (4), carry out a program, on a competitive basis, traineeships to undergraduate and graduate students at institutions of higher education in order to permit such students to pursue studies in areas of importance to the Department of Defense in mathematics, science, or engineering in settings or programs that provide such students exposure to multidisciplinary studies, innovation-oriented studies, and academic, private-sector, or government laboratories and research. It shall be the responsibility of the trainee who is selected to complete a traineeship to be designated by the Department of Defense for 10 years after completing his or her degree.

(2) **PARTICIPANTS.**—In each of fiscal years 2007 through 2011, the number of participants in the program required by paragraph (1) shall be as follows:

(A) Not more than 30 participants pursuing doctoral degrees.

(B) Not more than 30 participants pursuing masters degrees.

(C) Not more than 20 participants pursuing undergraduate degrees.

(3) **ANNUAL REPORTS.**—Not later than November 30 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the carrying out of the program required by paragraph (1) during the preceding fiscal year. The report shall describe the participants, and the studies pursued by such participants, in the program for the fiscal year covered by the report, and shall include an assessment of the benefits of the program to the Department of Defense.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—There is hereby authorized to be appropriated to the Department of Defense for each of fiscal years 2007 through 2011 the amount of $11,108,000 for purposes of carrying out the program required by this subsection, of which:

(A) $7,000,000 shall be available in each such fiscal year for participants in the program who are pursuing doctoral degrees under paragraph (2)(A);

(B) $2,600,000 shall be available in each such fiscal year for participants in the program who are pursuing masters degrees under paragraph (2)(B); and

(C) $1,500,000 shall be available in each such fiscal year for participants in the program who are pursuing undergraduate degrees under paragraph (2)(C).

**Subtitle B—Defense Advanced Manufacturing**

SEC. 411. MANUFACTURING RESEARCH AND DEVELOPMENT.

(a) **IDENTIFICATION OF ENHANCED PROCESSES AND TECHNOLOGIES.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the Director of Defense Research and Engineering, shall identify advanced manufacturing processes and technologies, utilizing the benefits of industrial processes and technologies identified under section 411(b), that are beneficial to the Department of Defense; and shall establish a task force, and act in cooperation with the private sector, to map the transition of technologies and processes needed to support technology development in the area identified under paragraph (1).

(b) **COORDINATION OF SELECTED Activities.**—The Secretary of Defense shall ensure the utilization in industry of enhancements in productivity and efficiency achieved through activities under this subtitle through the following:

(1) Research and development activities under the Manufacturing Technology Program, including establishment of public-private partnerships.

(2) Outreach through the Manufacturing Extension Partnership Program under section 412(a)(1), (b)(1), (b)(2), and (c).

(3) Cooperation with activities under other current programs for the dissemination of manufacturing technology as the Under Secretary considers appropriate.

(4) Identification of incentives for contractors in the defense manufacturing base to incorporate enhancements in manufacturing activities.

SEC. 412. TRANSFORMATION OF MANUFACTURING PROCESSES AND TECHNOLOGIES TO THE DEFENSE MANUFACTURING BASE.

(a) **ACCELERATION OF TRANSITION FROM SCIENCE AND TECHNOLOGY.**—

(1) **IN GENERAL.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake appropriate actions to accelerate the transition of transformational manufacturing technologies and processes and technologies identified under section 411(a) from the research stage to utilization in the defense manufacturing base in the fiscal years 2007 through 2011.

(b) **EXECUTION.**—The actions undertaken under paragraph (1) shall include a memorandum of understanding among the Director of Defense Research and Engineering, other appropriate elements of the Department of Defense, and the Joint Defense Manufacturing Technology Panel to accelerate the transition of technologies and processes as described in that paragraph.

(c) **DEVELOPMENT OF IMPROVEMENT PROCESSES.**—The Under Secretary shall, in consultation with organizations in the defense manufacturing base, develop and implement a program to continuously identify and utilize improvements and innovative processes for defense acquisition programs and by manufacturers in the defense manufacturing base.

(d) **EXTENSION INTO DEFENSE MANUFACTURING BASE.**—The Under Secretary shall ensure the utilization in industry of enhancements in productivity and efficiency achieved through activities under this subtitle through the following:

(1) Research and development activities under the Manufacturing Technology Program, including establishment of public-private partnerships.

(2) Outreach through the Manufacturing Extension Partnership Program under section 412(a)(1), (c).

(3) Cooperation with activities under other current programs for the dissemination of manufacturing technology as the Under Secretary considers appropriate.

(4) Identification of incentives for contractors in the defense manufacturing base to incorporate enhancements in manufacturing activities.
the United States retains foreign-born high-tech talent educated in the United States and remains the leader in innovation and technological development in an emerging global economy. Such comprehensive reform should ensure—

(1) that the United States continues to retain foreign nationals who have received master's or higher degrees in the sciences, technology, engineering, and mathematics from United States institutions of higher education under either—

(A) the H-1B visa program; or

(B) as employment-based immigrants;

(2) that the United States must take a forward-looking approach with respect to any limitation on the H-1B visa program;

(3) that immigration reform should also include systematic improvements to the Government's technology infrastructure in order to eliminate delays in processing immigration proceedings, including employment-based visa applications.

SEC. 502. STUDY ON BARRIERS TO INNOVATION.

(a) In General.—The National Academy of Sciences shall conduct and complete a study to identify, and to review methods to mitigate, new forms of risk for businesses beyond conventional operational and financial risk that affect the ability to innovate, including studying and reviewing—

(1) incentive and compensation structures that may encourage long-term value creation and innovation;

(2) methods of voluntary and supplemental disclosure by industry of intellectual capital, innovation performance, and indicators of future valuation;

(3) means by which government could work with industry to enhance the legal and regulatory environment to encourage the disclosure described in paragraph (2);

(4) practices that may be significant deterrents to United States businesses engaging in innovation risk-taking compared to foreign competitors, including tort litigation, the nature and extent of any resulting defensive management practices, and recommendations on practices to restore innovation risk-taking and to overcome defensive practices;

(5) means by which industry, trade associations, and other concerned interests could support research on management practices and methodologies for assessing the value and risks of longer term innovation strategies; and

(6) means to encourage new, open, and collaborative dialogue between industry associations, regulatory authorities, management, and other concerned interests to encourage appropriate approaches to innovation risk-taking.

(b) Report Required.—The National Academy of Sciences shall, not later than 1 year after the date of enactment of this Act, submit to Congress a report on the study conducted under subsection (a).

(c) Authorization of Appropriations.—There are authorized to be appropriated to the National Academy of Sciences $1,000,000 for fiscal year 2007 for the purpose of carrying out the study required under this section.

SEC. 503. SENSE OF CONGRESS ON PATENT REFORM.

It is the sense of Congress that—

(1) to bolster the United States economy and strengthen innovators in the United States, the patent system should be reformed to enhance the quality of patents, to leverage patent databases as innovation tools, and to create best practices for global collaborative standard setting; and

(2) the objectives described in paragraph (1), the Federal Government should—

(A) fully fund the Patent and Trademark Office and enable the Office to direct its fees to fund process improvements;

(B) improve compliance with existing patent requirements and create incentives for improved search and disclosure of prior art;

(C) create new standards for searchability of patent applications;

(D) establish a fair and balanced post-grant patent review procedure for future patents and patent applications;

(E) invest in retroactively creating searchable keywords for a subset of the most highly cited historical patents;

(F) secure reciprocal access to foreign patent databases; and

(G) set best practices and processes for standards bodies to align incentives for collaborative standard setting, and to encourage broad participation.

Mr. LIEBERMAN. Mr. President, today I rise with my colleague Senator ENZI to introduce the National Innovation Act, S. 2105. This Act is about building a new century of progress and prosperity for our Nation by spurring a new wave of American innovation—better known around the world as “American ingenuity.”

Our Nation was founded by innovators—Winston, Jefferson, Franklin and many other founders. Founding Fathers not only created a new republic, but in their spare time were inventors and investors, as well, who believed that innovation would be important to the growth and security of the nation.

The generations that followed took up the call. Whitney, Bell, Edison, Fulton, Morse, Ford, Colt, the Wrights—I don’t even have to say their first names and you know who they are and what they did.

Now we face a new century with new challenges—a global age where competition can come as easily from across an ocean as from across the street. We got a wake up call earlier this week about how tough the challenge is when it was announced that China had overtaken the United States as the world’s largest exporter of high-tech products.

According to statistics released by the Organization for Economic Co-operation and Development (OECD), China shipped $180 billion worth of such goods last year, exceeding U.S. exports by 16 of our colleagues in the Senate.

Forrester Research Inc., a Cambridge, MA research firm that has been studying this issue, has estimated that by 2015, 3.3 million high-tech and service industry jobs, or 5 percent of all U.S. employment, will be offshore.

Deloitte Consulting has estimated that approximately 2 million jobs in the financial services sector, which signifies nearly 15 percent of the industry’s total, could move overseas in the next 10 years, even more quickly. We are not just losing jobs. I fear we are beginning to lose critical pieces of our innovation infrastructure, and with them, our competitive edge in the global marketplace. What we always believed was our nation’s ultimate competitive advantage—our high-end R&D and technological prowess—is increasingly under siege. I said in 2004, the outsourcing of jobs is just the tip of an economic iceberg that America is sailing towards. If the most recent statistics tell us anything, it’s that there are even closer to that iceberg than ever before.

Luckily, these developments have not gone unnoticed. Earlier this year, the Council on Competitiveness—drewing on the insights of many experts from industry and academia, and led by Sam Palmisano of IBM and Wayne Clough of Georgia Tech University—circulated a report with detailed recommendations on how to reinvigorate the American innovation economy. The Innovation Act, which Senator ENZI and I are introducing today, is based on the Council’s recommendations. This is a strongly bipartisan bill, cosponsored by 16 of our colleagues in the Senate. Further, this bill is wholeheartedly supported by members of the business and academic communities in this country, many of whom are eager to see a reinvigoration of American ingenuity.

A few examples of these supportive statements include the following: Ron Cirelli, President of the Semiconductor Industry Association: “U.S. leadership in technology has been the cornerstone of America’s
strategies for driving economic growth and ensuring national security. U.S. leadership is being challenged as never before. The National Innovation Act of 2005 addresses a number of the most critical issues involving America's leadership, especially those related to federal support for basic research. . . . We are especially pleased to support a bipartisan approach to ensuring U.S. technology leadership. The issues at stake—national security and our standard of living in the 21st century—are far too important to become entangled in partisan politics.

Nicholas M. Donofrio, Executive Vice President, IBM Corporation: "IBM applauds the introduction of the National Innovation Act of 2005. . . . Innovation underpins our economy and national security. In today's era of global opportunity and change, the rewards flow to those who innovate and turn disruptive shifts to their advantage. Anon As has told us. . . . We are at such an inflection point today. The National Innovation Act of 2005 will create a strong America by integrating American academic, business and government communities to ensure the future growth of the United States. I urge all Senators to support this legislation."

Deborah Strickland, President, Council on Competitiveness: "On behalf of the Council's 180 CEOs, university presidents and labor leaders, I applaud the Senators' efforts and desire to ensure the United States remains the most competitive economic power in the world. We must, as a nation, innovate to compete and to prosper. This legislation is a critical step forward towards that goal."

Dave McCurdy, CEO, Electronic Industries Association: "EIA is thrilled by today's introduction of the National Innovation Act. . . . The legislation includes so many measures that can help the U.S. remain an economic leader in the global high-tech economy. It is an ambitious piece of legislation that spans the policy spectrum, but with the commitment and support of policymakers from both sides of the aisle, we hope to see these important provisions quickly begin to take effect and fuel the U.S. innovation engine."

John J. Castellani, President, Business Roundtable: "On behalf of Business Roundtable, an association of 160 chief executive officers of America's leading companies, I applaud Ensign and Senator Lieberman for their leadership on this critical issue. Maintaining our competitive edge in today's world economy is a top priority of the business community, and the National Innovation Act of 2005 is an important step in the right direction."

The list of organizations and companies that have already endorsed this bill includes the leading companies in the field, companies and organizations working to keep America at the cutting edge of technology development, including the following: American Mathematical Society, ASTRa (Alliance for Science & Technology Research in America), Athena Alliance, Bell South, Business Roundtable, Center for Accelerating Innovation, Computing Research Association, Council on Competitiveness, Council of Scientific Society Presidents, Electronic Industries Alliance, Federation of American Scientists, IBM, IEEE-USA, Progressive Policy Institute, Semiconductor Industry Association, SEMI North America, and TechNet. In addition, many universities and organizations support our bill because they recognize the importance of expanding education in science, math, and engineering. We have received strong support from the academic community, including the Association of American Universities (AAU), the Council of Graduate Schools (CGS) and Georgia Institute of Technology. While I won't describe every provision of this far-reaching bill today, a section-by-section summary accompanying the legislation will say that the National Innovation Act addresses three broad categories—talent, investment, and infrastructure—all of which are key to America's regaining a competitive position among our trading partners.

Number one, Talent: Innovation requires the incubation of curious minds. That means we absolutely must educate and develop a science and engineering talent base that is essential to our continued global economic leadership. The number of jobs that require technical training is increasing at five times the rate of other occupations. To encourage more students to enter these technical professions, our legislation increases Federal support for graduate fellowships and trainee programs in science, math, and engineering by more than $800 million over 5 years. Specifically, the legislation expands the National Science Foundation's (NSF) Graduate Research Fellowship Program by 1,250 fellowships and extends the length of each fellowship from 3 to 5 years. These fellowships are portable so fellows may choose the greatest flexibility in choosing graduate programs that fit their needs and interests. The legislation also expands the NSF Integrated Graduate Education and Research Traineeship (IGERT) program by 1,250 new traineeships. In the IGERT program, grants are awarded to universities to develop cross-disciplinary training programs for students in areas including science, math, and policy. The legislation also expands the NSF Integrated Graduate Education and Research Traineeship (IGERT) program by 1,250 new traineeships.

Number two, Investment: Great ideas need research money if they are to move from imagination to market. But, federal R&D spending as a percentage of GDP has been in steady decline since the mid-1960s. It is less than half of what it was then. This bill bolsters the mission of the National Science Foundation by more than doubling its research budget from $4.8 billion in 2004 to nearly $10 billion in 2011. Support for NSF is essential as it funds the full range of scientific disciplines and encourages multidisciplinary approaches to problem solving.

When it was created in 1950, Congress envisioned NSF as one of the primary catalysts for research "to promote the progress of science; to advance the national health, prosperity, and welfare; [and] to secure the national defense." In order for NSF to continue to meet our tremendous needs in all these areas, which notably remain as vital today as they did back then, it needs more funding. At the same time, we must recognize that we, as a country,
face difficult choices in how we allocate our resources. Hard choices may have to be made, but we cannot avoid the reality that an investment such as the increase in NSF’s research budget that our bill calls for today, is absolutely necessary if we are to remain competitive. It is my belief that this investment will pay vast dividends in the long run for the American people and for the American economy. I also believe that this investment will be made only if this investment is not made soon.

Congress is making steady progress toward finding reasonable ways to accommodate the needs of our five major research agencies. Our bill concentrates on two agencies: we double the authorization for NSF and we ask the Department of Defense (DOD) to spend 3 percent of its budget on science and technology, Dodd’s 6.1, 6.2, and 6.3, programs consistent with Defense Science Board recommendations. The research budget for life sciences at the National Institutes of Health (NIH) has been doubled in recent years and this legislation attempts to bring research in the physical sciences up to the same high level of funding. A major increase for NASA science research is now under consideration in conference and the Congress passed a significant increase in the authorization for Energy Department Science research as part of the energy bill this summer. So, our bill addresses the remaining top R&D agencies—NSF and DOD.

Our bill also creates an “Innovation Acceleration Grants” program to stimulate high-risk research by urging federal research agencies to allocate at least 3 percent of their current R&D budget to breakthrough research—the kind of research that gave us fiber optics, the Internet and countless other technologies relied on every day in this country. Technologies that gave us fiber optic telecommunications, the Internet and countless other research that gave us fiber optic telecommunications, the Internet and countless other connected research or translation research, which moves from fundamental discoveries through the development and procurement stages. We also anticipate that agencies would step outside the peer review approach, which can be too cautious, and empower talented program managers to drive novel and promising ideas forward. While it doesn’t mandate agencies spend at least 3 percent of their budgets on high-risk frontier research projects, this provision sets a realistic and reasonable strategic goal. It is our hope and expectation that agencies will view the 3 percent allocation as a starting point and will take the initiative to expand from there. The Innovation Acceleration Grants program is designed to be a streamlined mechanism to support those grants that are making progress and not support those that are floundering. The program has built-in, specially-designed metrics to ensure that granting agencies closely monitor the projects they support, renewing those with strong performance and phasing out those that don’t show enough real promise for the types of cutting-edge advancements that are truly innovative. It is important that it is designed in this manner because a cautious approach to these issues can not work. In order to face the challenge, we need to take risks and be patient. However, in an environment of increasingly tight fiscal pressures, we also must recognize that risk taking can and does fail from time to time. While many high-risk projects may fail, those that succeed can bring tremendous benefit. The urgency of the threats we face today warrants a balanced approach. We must continue to encourage the groundbreaking experimentation and longer-term outlook that made this country great. But we also must continue to take stock of our progress and make sure we are heading toward the ultimate goal of reestablishing the foundational elements of our successes over the last 50 years, and more.

Switching gears briefly, I think it is also important to note that the government cannot do this alone. The private sector in this country needs to continue to lead private-sector investment in research in this country, after a sharp rise in the 90’s, has been eroding in recent years in part because companies have moved some R&D operations abroad. About $17 billion a year in R&D now flows overseas to nations like China and India. And as that research money leaves our shores, the high-skilled 21st century jobs we need to compete sail away with them.

Our bill tries to help stem the tide by making the current Research and Experimentation (R&E) tax credit permanent and extending it to a greater number of enterprises; the same proviso also applies to state-sourced expenses under the American Jobs Act of 2005, sponsored by Senators HATCH and BAUCUS with 44 bipartisan cosponsors. These two Senators deserve the credit on this. We are simply trying to emphasize their efforts. Making the credit permanent allows our private entrepreneurial spirit to continue to drive the economic growth of this great nation and at the same time ensures that other countries like China do not lure away our talent and investment, and ultimately the innovation that comes from them. It gives our companies a powerful and reliable long-term incentive to include domestic R&D as a significant component of their strategic plans. Since the original enactment of the research credit in 1981, a public-private partnership has developed, through which the federal government has worked with businesses of all sizes to ensure that research expenditures continue to be made here in the United States. The reward has been the creation of many innovative companies, paying wages and taxes, and an increased growth rate in our economy. The importance of this effort cannot be understated.

At the same time that firms are investing more money in R&D, they must improve their ability to manage the technological innovations that result from this research. The emerging area of “service science” refers to both research and training regimens that are now starting up to teach individuals how to apply technology to solving complex problems in the service and industrial sector. Eighty percent of our economy is service-based, yet we do very little R&D in this area. We now face intense service competition from countries like India, taking advantage of global IT systems. If we don’t improve our services productivity, increasingly we won’t be able to compete. This legislation asks the Director of the National Science Foundation to conduct a study for Congress on how the federal government should best support service science through research, education, and training.

Number three, Infrastructure: Once we have helped assure the education foundation to give people the basic skills they need to use their creativity, and the resources they need to support experimentation, then we can reinvent and transform our manufacturing processes and technologies so that we can secure the gains from the fruits of all this labor. In this era of tough international competition, if we don’t manufacture here in the U.S., we will forfeit our global economic leadership and our children’s prosperity to other nations who can. To help facilitate this important goal, our legislation takes several steps.

First, the bill authorizes creates federally-funded and complementary advanced manufacturing programs at the Departments of Commerce and Defense. The development and implementation of state-of-the-art manufacturing systems does not happen overnight, nor can it be done alone. The goal of this new program is to, again, establish a public-private R&D partnership which enables risk taking and creativity to generate new processes and technologies. These new processes and technologies will give us the productivity breakthroughs we need to maintain our manufacturing competitiveness. I continue to believe in the spirit of American ingenuity—if given the chance and the tools to succeed, we will. This legislation also creates the Test Beds of Excellence program, which is designed test and refine these new processes and technologies in a real manufacturing setting once they have been developed. Then, we ask the Manufacturing Extension Program to help disseminate this new innovative knowledge throughout to manufacturing base, including to the many small and mid-sized companies that will be key to our growth. The Test Bed program is the foundation for just that, as in the case of the Innovation Acceleration Grants program and other important features of this legislation, it
is designed to self-scrutinize and adapt to the constantly changing needs of our manufacturing sector.

In addition to the effort at the Department of Commerce, our bill asks the Department of Defense to work with Congress to identify and accelerate the transition of advanced manufacturing technologies and processes that will enable us to maintain our technological edge on the battlefield. The Department of Defense relies on innovation, and the bill seeks to expand the Department's traditional manufacturing sector work in this area. An additional motivating factor within the Department of Defense is the inherent security risk associated with using certain overseas suppliers. American manufacturing must remain competitive in order to meet the needs of our military in a timely fashion.

These steps will go a long way toward revitalizing our manufacturing system into a system that is seamlessly integrated with our other efforts to boost American innovation through education and research.

Our bill goes further, recognizing that innovation fundamentally occurs not at the national level, but at the local and regional levels. Certainly there are many lessons to be learned from the rise of Silicon Valley and other similar regions that have sprung up all over this country as centers for high-technology innovation. These clusters have developed in areas throughout China, India, Israel and many others, and have already begun to emulate the successes we have achieved in this way. These clusters have developed in areas and we don’t want to get in their way. However, the bill cites these moving

issues to mark the importance of considering how legislation on these issues may affect our economy’s ability to remain competitive. The provision creates an objective that the National Academy of Sciences and the National Academy of Engineering would allow Congress to understand how legal and other structural aspects of the U.S. economy may affect our ability to be innovative.

From the 18th century Franklin stove to the 20th century personal computer, the United States has long been the leader in the technology and innovation that created jobs, wealth, and an ever-increasing standard of living for our people. We call it American ingenuity. It’s time to take that native ingenuity and build a new century of progress for America.

I ask unanimous consent that a section-by-section analysis of the National Innovation Act, a short summary of the legislation, and statements of support for this legislation be printed in the RECORD.

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

### National Innovation Act of 2005 Section-by-Section Analysis

#### Title I—Innovation Promotion

Sec. 101. President’s Council on Innovation

The President shall create a Council on Innovation comprised of heads of various agencies including Commerce, Defense, Education, Energy, and others. The Council, which will be chaired by the Secretary of Commerce, will have oversight over legislation and initiatives for promoting innovation. Specifically, the Council will develop a process for using metrics to evaluate existing and proposed innovation policies and recommendations to heads of executive agencies on improvements to innovation policies. In addition, the Council shall develop a comprehensive agenda for strengthening innovation among the Federal Government, states, academia, and the private sector. The Council will submit an annual report to the President and the Congress on its activities.

Sec. 102. Innovation Acceleration Grants

The President will establish the “Innovation Acceleration Grants Program” to promote and accelerate innovation in the United States. Each executive agency that currently funds research and development (R&D) in science, mathematics, engineering, and technology shall have a goal to commit 2.5% of its existing budget to grants to public and private institutions.

Sec. 103. A national commitment to basic research

Authorization are provided to nearly double NSF research funding from Fiscal Year 2007 through Fiscal Year 2011. Within 180 days of enactment, the National Science Foundation shall submit to Congress a detailed plan for the use of these funds. The plan shall focus on means by which basic research in science and engineering will optimize the United States economy for global competition and leadership in productive innovation. In addition, within one year of enactment, the director of National Science Foundation and Technology Policy shall evaluate funding needs for R&D in physical sciences and engineering in consultation with relevant agencies and departments. As appropriate, recommendations for increases in such funding should be submitted to Congress.

Sec. 104. Regional economic development

The Assistant Secretary for Economic Development of the Department of Commerce shall review federal programs that support local economic development and devise a strategy to foster innovation within communities. The Assistant Secretary is directed to develop metrics to evaluate existing programs and, consistent with the strategy to foster innovation, to prioritize metrics that satisfy the metrics developed and that best emphasize...
cooperation between the public and private sector to promote innovation.

In addition, within 1 year of enactment, the Secretary of Commerce shall publish a “Guide to Developing Successful Regional Innovation Hot Spots.” The guide shall be compiled by the Secretary of Commerce in consultation with representatives of successful regions. The guide shall provide features of such hot spots and recommend mechanisms for forming new successful regional collaborations. The Department of Commerce shall be responsible for developing these features to educate the public and private sector on the best practices of successful regions. The guide shall be published by the Secretary of Commerce in consultation with representatives of successful regions.

Sec. 106. Development of advanced manufacturing systems

The Director of the National Institute of Standards and Technology (NIST) shall support R&D efforts in the industrial sector to develop innovative, state-of-the-art manufacturing practices. Targeted activities include improving advanced distributed and desktop manufacturing capabilities, developing small lot manufacturing processes, and developing standards. The NIST Director will support the development of prototypes for new technologies, the testing of these technologies, and the adoption of standards to accelerate the development of these technologies. The NIST Director will hold a competition to select up to 3 Pilot Test Beds of Excellence to execute these programs. Federal Government will provide no more than 1/3 of the funding for each Test Bed. Private sector participants and corresponding state or local governments must each provide at least 1/3 of the funding for each Test Bed. All Test Beds are subject to review and will receive federal funds for longer than five years.

The NIST Director shall ensure that the Manufacturing Extension Partnership (MEP) develops a focus on innovation. This section supports an increased commitment to service science through the Science, Mathematics, and Technology Talent expansion program authorized under section 202 of the National Science Foundation Authorization Act of 2002. The Tech Talent expansion program encourages American universities to increase the number of students in degrees in mathematics and science. The bill authorizes $355 million from Fiscal Year 2007 to Fiscal Year 2010 for continued support of this program.

Sec. 203. Increased support for science education through the National Science Foundation

This section supports an increased commitment to science education through the Science, Mathematics, and Technology Talent expansion program authorized under section 202 of the National Science Foundation Authorization Act of 2002. The Tech Talent expansion program encourages American universities to increase the number of students in degrees in mathematics and science. The bill authorizes $355 million from Fiscal Year 2007 to Fiscal Year 2010 for continued support of this program.

Sec. 204. Innovation-based experiential learning

This section authorizes grants to local educational agencies for innovation-based experiential learning in 500 secondary schools and 500 elementary or middle schools. Funds are authorized at levels of $200 million in Fiscal Year 2007 and at $200 million per year for Fiscal Years 2008 and 2009.

Subtitle B—21st Century Healthcare System

Sec. 211. Sense of the Congress regarding 21st Century Healthcare System

It is the sense of the Congress that the Federal Government should encourage the adoption of interoperable health information technology by facilitating the creation of standards for activities such as quality reporting, surveillance, epidemiology, or adverse event reporting. Federal agencies or private companies may be urged to collect data in a manner consistent with devised standards.

TITTLE III—INCENTIVES FOR ENCOURAGING INNOVATION

Sec. 301. Permanent extension of research credit

This provision makes the research credit set forth in section 41(a) of the Internal Revenue Code permanent. The credit, originally enacted in 1981, has been extended 11 times and is scheduled to expire on December 31, 2009. The permanent credit should allow companies to engage more easily in long-term research projects. This section modifies the means for calculation of the elective alternative incremental research credit to increase the rates applicable to such an election. The bill reduces the rates to 12% and 5%.

Sec. 302. Alternative simplified credit for qualified research expenses

This section creates a new elective alternative simplified credit for qualified research expenses to deal with such events and the report should discuss approaches and recommendations for administrative and legislative action to minimize the financial risks associated with catastrophic healthcare events and chronic disease. The goal of the study is to develop innovative public and private sector approaches for dealing with such events and the report should discuss approaches and recommendations for administrative and legislative action to minimize the financial risks associated with catastrophic healthcare events and chronic disease. The study should include analysis and recommendations regarding whether individual should be allowed to transfer funds in certain existing retirement or education-related accounts into a lifelong learning account without incurring tax liability or other penalties.

Sec. 312. Lifelong learning accounts

This provision requires the Secretary of the Treasury, in collaboration with the Secretaries of Labor and Education, to conduct a study and submit a report to Congress regarding the potential establishment of lifelong learning accounts to be used for education or training purposes, and which would be exempt from personal income taxation. The study should include analysis and recommendations regarding whether individuals should be allowed to transfer funds in certain existing retirement or education-related accounts into a lifelong learning account without incurring tax liability or other penalties.

Subtitle C—Savings and Investments

Sec. 321. Regulations relating to private foundation support of innovations in economic development

This provision requires the Secretary of the Treasury to issue regulations clearly identify when distributions by private foundations for purposes of economic development will be treated as charitable contributions pursuant to the Internal Revenue Code. This provision also requires the Secretary of the Treasury to issue regulations to clarify the circumstances under which individuals may make charitable contributions of start-up ventures without triggering the five percent excise tax applicable to investments.
which jeopardize the carrying out of any of the Foundation’s exempt purposes.

Sec. 322. Advisory group regarding valuation of intangibles

This provision requires the Secretary of the Treasury to establish an advisory group to examine issues related to proper valuation of intangible assets, including R&D, business processes and software, brand enhancement, and employee training. The advisory group consists of representatives from the Department of Commerce, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the New York Stock Exchange, the National Association of Securities Dealers Automatic Quotation System, and other significant industry sectors. Based on its research, as well as communications with industry and academic experts, the advisory group is required to submit a report to the Secretary of the Treasury within 24 months of enactment, including discussion of best practices for valuation of intangibles and metrics or other solutions.

TITLE IV—DEPARTMENT OF DEFENSE MATTERS

Subtitle A—Defense Research and Education

Sec. 401. Revitalization of frontier and multidisciplinary research

U.S. Government investment in frontier and multidisciplinary research is key to the further application and development of innovative technologies. This section establishes as a goal of the Department of Defense to allocate at least 3% of its total budget toward science and technology research. This provision also urges the allocation of at least 20 percent of this amount toward basic research in such fields.

Sec. 402. Enhancement of education

This section extends the Department of Defense’s Science, Mathematics, and Research for Transformation (SMART) Scholarships program through September 30, 2011, and authorizes $41.3 million/year over 5 years for the SMART program to support additional participants pursuing doctoral degrees and master’s degrees in relevant fields. This section also authorizes $45 million/year over 5 years to be appropriated to the Department of Defense to support the expansion of the National Defense Science and Engineering Graduate Fellowship program to additional participants.

This provision requires the Secretary of Defense competitive traineeship program for students in the areas of mathematics, science, and engineering with specific focus on innovation-oriented studies, multidisciplinary studies, and laboratory research. This section authorizes $11.1 million/year over 5 years to sponsor up to 30 doctoral candidates, 30 master’s candidates, and 20 undergraduates under this program. Program graduates will be encouraged to work for at least 10 years for the Department of Defense. The Secretary of Defense shall submit an annual report to the House and Senate Armed Services Committees describing the work done by all sponsored students and the benefit of this work to the Department of Defense.

Subtitle B—Defense Advanced Manufacturing

Sec. 411. Manufacturing research and development

This section requires the Under Secretary of Defense for Acquisition, Technology, and Logistics to identify innovative manufacturing processes and advanced technologies that could enhance the efficiency and productivity of the defense manufacturing base. Once identified, the Under Secretary is further required to commission research and development of such innovative processes and technologies, and is encouraged to make use of information technology and new business models to accelerate the transition to extended production enterprises. The Under Secretary shall consider defense priorities established in the most recent Joint Warfighting Science and Technology Frameworks for identifying such technologies and related manufacturing processes.

Sec. 412. Transition of transformational manufacturing processes and technologies to the defense manufacturing base

This section requires the Under Secretary of Defense for Acquisition, Technology, and Logistics to take certain actions, including the execution of a memorandum of understanding among appropriate elements in the Department of Defense, to accelerate the transition by manufacturers in the defense manufacturing base to transformational manufacturing processes and technologies, including processes and technologies identified or created pursuant to Section 411. The Under Secretary is also required to utilize the existing Manufacturing Technology Program to develop prototypes and test beds for such processes and technologies, and to implement a program for the defense manufacturing base to continuously identify and utilize improvements in processes and technologies. In order to ensure increases in productivity and efficiency, the Under Secretary will promote research and development under the Manufacturing Technology Program and outreach through the Manufacturing Extension Partnership Program.

Sec. 413. Manufacturing technology strategies

The Under Secretary of Defense for Acquisition, Technology, and Logistics is authorized to identify and investigate innovative areas of technology that could benefit the Department of Defense in carrying out its defense manufacturing requirements. Once identified, the Under Secretary may establish a task force with the private sector to map a strategy for the development of such technologies and related manufacturing processes. The roadmapping process shall begin no later than January, 2007.

Sec. 414. Planning for adoption of strategic innovation

This section requires the Secretary of Defense to ensure that contracts valued at $50,000,000 or more under a technology or logistics contract entered into for the purpose of increasing science and technology talent, the 21st Century: (1) research investment, (2) implementation of the U.S. Patent and Trademark Office’s best support innovation.

The bill establishes the President’s Council on Innovation to develop a comprehensive agenda to promote innovation in the public and private sectors. In consultation with the Office of Management and Budget, this Council will develop and use metrics to assess the impact of existing and proposed laws that affect innovation in the United States. In addition, the Council would help to coordinate the various federal efforts that support innovation, and use metrics to assess the performance of the federal innovation programs located in different administrative agencies. The Council is required to submit an annual report to the President and to the Congress on how the Federal Government can best support innovation.

The bill establishes the Innovation Acceleration Grants Program which encourages federal agencies funding research in science and technology to allocate part of research and Development (R&D) budgets to grants directed toward high-risk frontier research. Although this provision sets 3% of R&D budgets as a strategic goal to allocate to high-risk frontier research projects, it does not mandate that the agencies spend at least 3% of their budgets in this manner. All agencies are required to be assessed with metrics and no grants will be renewed unless the agency is distributing the
grant determines that all metrics have been satisfied.

Increases the national commitment to basic research by nearly doubling research funding through the National Science Foundation (NSF) by FY 2011.

Makes permanent the Research and Experimentation (R&E) tax credit with modifi-
cations.

The new provision will help American firms and America's workforce.

SCIENCE AND TECHNOLOGY TALENT

Expands existing educational programs in the physical sciences and engineering by in-
creasing NSF graduate fellowships and fellowship programs as well as Department of Defense science and engineering scholar-

ships programs. These fellowships provide an incentive for American students to pursue post-graduate degrees in the sciences, technology, engineering, or mathematics.

Authorizes the Department of Defense to create a competitive traineeship program for undergraduate and graduate students in de-

fense science and engineering that focuses on multidisciplinary learning and innovation-oriented studies.

Authorizes funding for new and existing Professional Science Master's Degree Pro-

grams to increase the number of qualified scientists and engineers entering the work-

force.

INNOVATION INFRASTRUCTURE

Authorizes the Department of Commerce to promote the development and implement-

ation of state-of-the-art advanced manufactur-
ing systems and to support up to three Pilot Test Beds of Excellence for such sys-

tems. The Secretary of Commerce will con-
duct a competition to select the Pilot Test Beds based on objective criteria and metrics.

Encourages the development of regional clusters (“hot spots”) of technology innova-
tion throughout the United States.

Empowers the Department of Defense to identify and accelerate the transition of ad-

vanced manufacturing technologies and processes that will improve productivity of the defense manufacturing base.

MAJOR ORGANIZATIONS SUPPORT THE NIA

"U.S. leadership in technology has been the cornerstone of America’s strategies for
driving economic growth and ensuring na-
tional security. U.S. leadership is being chal-

lenged as never before. The National Innovation Act sets an agenda for a number of the most critical issues involving technology leadership, especially those related to fed-
eral support for basic research... We are especially encouraged by the bipartisan approach to ensuring U.S. technology leadership.

The issues at stake—national security and our standard of living in the 21st cen-
tury—are far too important to become en-
tagled in partisan politics."—George Scalise, President, Semiconductor Industry Association.

"Nothing can do more for the U.S. econ-

omy and to help ensure America’s global competitiveness than an enhanced focus on innovation and research by the public and private sectors... Engineers and scientists must be sure that the skilled, creative and competitive workforce in America will continue to build the future..."—Dr. Robert Atkinson, Vice President, Progressive Policy Institute, Washington, DC.

"IBM applauds the introduction of the Na-
tonal Innovation Act of 2005... Innovation underpins American economic growth and national security. In today’s era of global op-

portunity, and knowledge and capital flow to those who innovate and turn disruptive shifts to their advantage. America has a long, proud history of recognizing when change is required and stepping up to the chal-

lenge. We are at such an inflection point today. The National Innovation Act of 2005 will create a symphony of America’s aca-
demic, business and government commu-
nities to ensure the future growth of the United States. I urge all Senators to support this legislation."—Henry Ford, President and CEO of the Fed-
eration of American Scientists.

"In response to new competitive threats in the 1980s, Congress enacted important legislation to help American companies success-

fully meet that challenge. Twenty years later, as America once again faces competi-

tiveness challenges, the National Innovation Act of 2005 proposes critically important policies and programs to foster innovation and help American companies and workers compete..."—Deborah A. Parviz, President, National Science Board, National Science Foundation.

"The National Innovation Act of 2005 represents an important, multifaceted strategic and systemic approach to one of the most important problem sets facing the long term American future."—Martin Apple, President, Council of Scientific Society, Founder of the 21st century..."—Dr. Robert Atkinson, Vice President, Progressive Policy Institute, Washington, DC.

"EIA is thrilled by today’s introduction of the National Innovation Act of 2005 (NIA), which includes so many measures that can help the U.S. remain a leadership in the global high-tech economy. It is an ambi-
titious piece of legislation that spans the pol-
cis spectrum, with the commitment and support of both sides of the aisle, we hope to see these important provisions quickly begin to take effect and fuel the U.S. innovation engine."—Dave McCurdy, CEO, Electronic Industries Asso-
ciation.

"We are writing to express our support for the National Innovation Act of 2005. Athena Alliance is research institute focused on un-
derstanding the emerging Information, Inno-
vation and Intangibles (I-Cubed) Economy. The United States faces a critical chal-

lenge in coping with this new I-Cubed Eco-

omy. Athena Alliance believes that the Na-
tional Innovation Act of 2005 is a step for-
ward in addressing this challenge..."—Richard Cohen, Chairman, Kenan Jarboe, President, Athena Alliance.

"The U.S. government is an important partner in fostering innovation, but together we must do more. The country is facing great competitive challenges and now is the time to vigorously address this challenge..."—Victoria Hadfield, President, SEMI North America.

"I truly believe that our nation’s future economic and technological leadership are at risk if we do not act soon to strengthen American competitiveness. Senate’s Ensign and Lieberman are the leading way by pro-

posing comprehensive legislation that will substantially increase our commitment to basic research, take decisive steps to grow the S&F talent pool, and provide meaningful incentives to encourage innovation..."—Dr. Joseph L. Bell, President of the American Chemical Society.

"IEEE-USA applauds Senators John En-

sign and Joseph Lieberman and their sta-

taff for their tireless efforts in crafting legisla-
tion designed to enhance and preserve U.S.

competitiveness and innovation. This bill represents a huge step forward in promoting policies that will sustain U.S. technological leadership and encourage the development of the skilled, creative and competitive work-

force critical for U.S. success... We urge Congress to deal with this legislation expedi-

tiously..."—Gerard A. Alphonce, President, IEEE-USA.

"ASTRA, The Alliance for Science & Tech-

nology Research in America, strongly sup-
ports the National Innovation Initiative and the National Innovation Act of 2005. ASTRA’s Board of Directors has identified enactment of the National Innovation Act of 2005 as its top legislative priority for 2006. In many ways, The Act represents the culmi-

nation of nearly five years of effort by ASTRA and its members to raise this issue to a national level of discussion and we are very gratified by this initiative..."—Rob-

er J. Cools, Executive Director, ASTRA.

"There is no more important public policy priority than creating an environment in which innovation will flourish and fuel con-

tinued U.S. economic growth and global leadership. The National Innovation Act em-

bodies this goal and rightly calls for our na-

tion to focus our attention on the critical and systemic approach to one of the most important problem sets facing the long term American future..."—Lizette Westine, President and CEO of TechNet.

"The National Innovation Act of 2005... is a significant bi-partisan response to the chal-

lenges the U.S. faces in the highly competitive, global economy. The legislation is properly aimed at reversing adverse trends in research and human capital by augmenting funding for multidisciplinary studying how in-

novation in manufacturing and the service sectors and investing more resources in the next generation scientists, engineers, work-

ers and entrepreneurs..."—Eglis Miltberg, President, Center for Accelerating Innovation.

Hon. JOHN ENSIGN, U.S. Senate, Wash-

ington, DC. Hon. JOSEPH LIEBERMAN, U.S. Senate, Wash-

ington, DC.

DeANs Ensign and Lieberman: As TechNet members and chief executives of the nation’s leading technology companies, we are writing to express our strong support for the National Innovation Act (NIA) of 2005. We commend your leadership in developing the NIA and look forward to working with you to support enactment of this important legislation.

Our Nation has reached a critical juncture unprecedented in our history. While our Na-

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working to create their own innovation infrastructure. These efforts range from tax incentives to attract new research and development to increased investments in math and science education. In short, while many countries recognizing R&D’s economic development potential, the U.S. can no longer afford a leading position to be granted, nor accept the status quo as sufficient to stay competitive. Not surprisingly, these were the same observations and conclusions reached by those leaders in business and academia who came together to produce Innovate America, the National Innovation Initiative Report, which was released this year by the Council on Competitiveness. This report produced a series of recommendations that collectively represent leading us on a roadmap leading toward a nation better equipped and educated to both innovate and compete in a global economy.

We are pleased to see a substantial number of these recommendations embodied in the NIA. Your legislation clearly recognizes that changes are needed in a wide range of areas: reforms in tax policy; federal investments in elementary and secondary education; scholarship availability for undergraduate and graduate students; federal research priorities; intellectual property protection, especially in areas in our innovation infrastructure, including health care and our armed forces.

The Council’s diversity of the issues covered in the NIA demonstrate the complexity and the enormity of the fundamental challenge that confronts us: the economic security and competitiveness of our Nation.

We stand ready to work with you to move this important legislation forward and thank you for your commitment to the Nation’s future innovative capacity and capability.

Sincerely,

Jim Barksdale, Partner, Barksdale Management Corporation, Co-Founder, TechNet; John Chambers, President & CEO, Cisco Systems, Inc., Co-Founder, TechNet; John Doerr, Partner, Kleiner Perkins Caufield & Byers, Co-Founder, TechNet; James Breyer, Managing Partner, Accel Partners; Ronald Conway, Founder & General Partner, Angel Investors, LP; Carol Bartz, Chairman, President & CEO, Autodesk, Inc.; John Conaway, Managing Director, Borealis Ventures; Henry Samueli, Chairman & CTO, Broadcom Corporation; Gary Lauer, Chairman & CEO, eHarmony; Craig R. Barrett, Chairman, Intel Corporation; Brian Keane, President & CEO, Keane, Inc.; Ralph Folz, CEO, Molecular, Inc.; Safra Catz, President & COO, Oracle Corporation; Phillip Dunkelberger, President & CEO, PGP Corporation; Norman S. Wolfe, President & CEO, Quantum Leaders, Inc.; Leslie Westine, President & CEO, TechNet; Nancy Heinze, Sr. Vice President & General Counsel, Apple; Tod Loofbourrow, President & CEO, TechNet; Dwight W. Deckard, Chairman & CEO, Conexant Systems, Inc.; Donald B. Means, Founder & Principal, Digital Village Associates; Meg Whitman, President & CEO, eBay; Christopher Greene, President & CEO, Greene Engineers; Brad Smith, Sr. Vice President & General Counsel, Microsoft Corporation; Raouf Y. Halim, CEO, Minspeed Technologies, Inc.; Harry W. Kellogg, Jr.; Vice Chairman, Silicon Valley Bank; Bruce Mackin, President, Silicon Valley Bank; & CEO, SkillSoft; Robert Farnsworth, CEO, Zebra Imaging, Inc.

[From the Association of American Universities]

STATEMENT ON THE NATIONAL INNOVATION ACT

The Association of American Universities applauds Senators Ensign and Lieberman for their introduction of the National Innovation Act of 2005. This legislation responds directly to the foundation set of recommendations made by the Council on Competitiveness for much needed improvements in our Nation’s ability to innovate and compete globally.

The Council’s report, like subsequent reports by the National Academies and a host of business and academic organizations, makes a powerful case that the Nation’s ability to compete effectively in the 21st century is under serious threat. That threat is posed largely by continuing underinvestment in fundamental research and our growing weakness in producing scientists, engineers, and others with the technological skills needed for the workforce of the future.

The proposals contained in the National Innovation Act is a critical step toward strengthening the Nation’s innovation infrastructure for the 21st century. Among other things, the measure would create a Presidential initiative to authorize and prioritize doubling research funding at the National Science Foundation by FY 2011, expand graduate fellowships and traineeships, and encourage federal research agencies to devote three percent of their research and development budgets to “high-risk frontier research.”

The legislation not only addresses the Council’s recommendations but also reflects what has become a consensus among the nation’s business and academic communities concerning actions we must take to ensure our future global competitiveness and our national security. It is the hope of AAU and the 60 leading U.S. research universities that comprise its membership that Congress will begin acting on these proposals at the earliest possible date.

COUNCIL OF GRADUATE SCHOOLS
Washington, DC, December 14, 2005
Hon. Joseph Lieberman, Hart SOB, Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing to commend you and your colleagues in introducing the National Innovation Act of 2005. This legislation is critical to achieving the highly skilled workforce necessary for the U.S. to compete effectively in the 21st century global economy. Thank you for your leadership in this important policy matter. The Council of Graduate Schools looks forward to working with you to implement this important legislation.

Sincerely,

DEBRA W. STEWART.

By Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. THOMAS, and Mr. ALLARD):

S. 2110. A bill to amend the Endangered Species Act of 1973 to enhance the role of States in the recovery of endangered and threatened species, to improve management of species, and for other purposes; to the Committee on Finance.

Mr. CRAPO. Mr. President, I rise today to introduce a bill, the Collaboration for the Recovery of the Endangered Species Act, or CRESA. Over the years, this body and the Nation as a whole have fiercely debated the merits of the Endangered Species Act. But there is one fundamental concept on which we all agree—saving endangered species is essential.

We have 30 years of experience with the laws that govern species management. We know the original intent. We have witnessed the strengths of the Act and its capability and commitment to save species from extinction. We know about the endless litigation. We have seen disappointingly few species recover. We have lost farms and valuable ranch land, putting families out of business. Ironically, the biggest losers are the very species we are attempting to recover.

However, we have also seen amazing things happen in Idaho, in Arkansas, Wyoming and in California to name just a few. We have seen landowners, conservationists, local, state and Federal agencies come together, figure out a workable plan and set about to do the business of recovering species. These plans are tried and true—they work, and they need to have the strength of the law behind them.

Some ask why the Endangered Species Act needs to be improved. The answer is short—we must apply lessons learned from the most successful that collaboration works. Collaboration allows the process to move forward. By its very nature, litigation sets one group against another—making them rivals, not partners. Too often we work against each other, rather than with and for each other. We need to encourage what works in order to create the results we all want.

The next logical step and what is needed now is a way to facilitate the SMART program supporting additional participants pursuing doctoral and master’s degrees in key fields.

Supporting graduate education is critical to achieving the highly skilled workforce necessary for the U.S. to compete effectively in the 21st century global economy. Thank you for your leadership in this important policy matter. The Council of Graduate Schools looks forward to working with you to implement this important legislation.

Sincerely,

DEBRA W. STEWART.
CRESA also promotes flexibility. One lesson learned in the course of creating and implementing the successful species management partnerships that I have mentioned today is that it is vital to work at the point of recovery—on the ground, as we tend to say. Working at the point of recovery recognizes the benefits of fine-tuning individual solutions to meet specific challenges, but with the greater and broader goal of species recovery. This is flexibility and it cannot be achieved, 2,900 miles from the ground of where the recovery is occurring. It is time to build on the ground that our resources should be applied.

CRESA promotes a freedom of process which encourages flexibility. I cannot emphasize how many times I have spoken with Idaho farmers and ranchers who tell me that, ‘that solution might work in the halls of Congress—it doesn’t work here on my land.’ It is ludicrous to believe that one-size-fits-all in the arena of species recovery. No two species, topography, environment or human natural resource use are the same, not even in the same county. There are multiple considerations that must be addressed in a cooperative, collaborative manner in order to achieve any kind of effectiveness.

Private property rights are not the enemy of conservation. Rather, the law can encourage landowners to involve themselves in the process. Landowners have a great deal of respect for species. It is not uncommon for them to tell you about the bear they caught sight of in the dim light of evening or the early morning grazing of deer in their fields. If landowners, especially ranchers and farmers, didn’t like animals, they likely wouldn’t do what they do. It doesn’t make sense.

In the same way, environmentalists don’t hate people. They, too, live on land somewhere, and many use the products that large landowners produce for our leather, furniture, and mining products, to name a few. Put in that perspective, it is obvious that working against one another is futile and counterproductive for people and species. We have innovative solutions that work for both species and people, and we need laws that facilitate this critical flexibility.

It is time to come together, sit down at the table and get down to the real matter at hand. We have to, in the words of the Senator from Oklahoma, concentrate on problem-solving rather than ideologies.” While there are great ideological divides on this issue, the ideas for how to solve conservation challenges are not polarized. There is a consensus that there are conservation solutions that can benefit people and species.

We have a tremendous responsibility with regard to our valuable natural resources. Growing up and living in Idaho, I cannot fully convey to those who have not experienced the beauty and wonder of my State’s wildlife and land. It is a farfetched to imagine that I or anyone else who lives and works this breathtaking setting would want to destroy it. Clearly, this is not just an Idaho issue. There are endangered species and wonderful lands in all 50 States and landowners nationwide are instrumental to solving the challenge of species recovery and restoration. The successful recovery of Endangered Species Act facilitates this tried and true method of species recovery—species recovery not just for today or next week or next year, but for our children and grandchildren. I look forward to working with my colleagues to give very careful consideration to this important legislation that we are introducing today.

I yield the floor.

Mr. THOMAS. Mr. President, I join with my friend from Idaho as a cosponsor to this bill on endangered species. He and I and others have worked on this for a good long time. Both of us have been on the Committee on Environment and Public Works. We are no longer there, but we started working there. We certainly are excited about the opportunity to bring to the floor some ideas that would deal with this whole notion of endangered species.

As the Senator has mentioned, all of us support the idea of continuing to have a program to protect endangered species. That concept is a good one. All of us support that. What we are talking about is a program that would be modernized and reorganized to be able to do that in a more efficient way.

We have good evidence that the program as it is, is not working. In a very simple way, what we have had is nearly 1,500 species listed. We have had less than a dozen delisted or put back where we want them. The emphasis has been on the listing, the emphasis has been on lawsuits, and the emphasis has been on disagreements. We should do work together to bring together the people who are interested. Whether they are environmentalists, whether they are landowners, whether they are naturalists, whatever, we all have the notion that we want to continue to make this program work, and we believe we have some ways to make it work better.

As was mentioned, the law is about 30 years old, so it is time to be updated. I agree with the Senator from Oklahoma that we need to modernize and reorganize as time goes by. What we have learned as they have been in operation is we can make them much more effective.

There are two things that concern me. One is that there needs to be a substantial amount and a necessary amount of scientific data and science required for the listing. We have had some experience in Wyoming with having species listed, and it turns out they were not endangered at all. They were not identified properly and, therefore, potentially we have too many species. All of this discussion only to discover that they were not, in fact, endangered species. So we need to have more
science and get into what is necessary to identify an animal or a plant as an endangered species.

Second, the other challenge is to have a plan for recovery, to have a plan for getting cooperation between the landowners and the users and all the people that care about endangered species. The numbers that were set forth in the plan for recovery were reached 15 years ago, and we are just now in the process of actually having the recovery and the delisting take place. So we have really lost sight of the goals of recovery species.

This is bipartisan language. We will have supporters from both sides of the aisle, and there is also an Endangered Species Revision Act that passed in the House and Senate. It would have an opportunity when this is passed to come together with the House program to put together something that will be amenable and acceptable to both the House and Senate. It is bipartisan legislation, as indeed it will have an opportunity.

I am sure we will have hearings, as we should, because there is a lot of interest in this issue. As the Senator pointed out, you have them on the east coast and you have them on the west coast, and the situations are different. This bipartisan language would require recovery goals to be published at the time the species is listed. So there is a plan, and we do not go through this endless proposition. It would make it easier to delist them as soon as recovery goals are met, and that should be the purpose of the program.

It increases the State’s role. This is very important. Many on the side of animals as opposed to plants, you have Fish and Wildlife Service, you have Park Service, you have State game and fish, you have State land agencies, so there needs to be a good deal of cooperation.

There also, of course, needs to be involvement with landowners who are impacted and affected by the plan for listing and the existence of those criteria. So that needs to be there.

We need to provide incentives for working together. Much of this can be done without a lot of rules and regulations. The sage grouse was mentioned. There is a good deal of progress being made there in the private sector with groups coming together. We can do that.

I will not take any more time. I look forward to working with my colleagues. It is going to be in the Finance Committee. We hope we can have hearings soon and get this bill on the floor, work with the House, and be able to have a successful program put into place so we can continue to protect endangered species.

By Mr. BAYH:

S. 2111. A bill to amend the Internal Revenue Code of 1986 to provide a credit for small business employee training expenses, to increase the exclusion of capital gains from small business stocks, to extend expensing for small business expenses; to the Committee on Finance and Report S. 2111.

Mr. BAYH. Mr. President, I rise today to introduce the Small Business Growth Initiative of 2005, which is critical to expanding opportunities for our small businesses to excel in the U.S. economy and compete with larger businesses at home and abroad. Our Nation’s competitiveness hinges on our ability to cultivate the entrepreneurial spirit and provide a policy environment that helps our Nation’s job creators start or expand small businesses. Since I joined the Small Business Committee in 2003, I have redoubled my efforts to help small businesses, and this bill represents my latest ideas and work to provide additional assistance to the small business community.

In my home State of Indiana, small businesses employ nearly 1.3 million Hoosiers and make up 97.5 percent of all Indiana companies. Nationwide, small businesses have created between 200,000 and 400,000 jobs over the last decade. Despite this success, small businesses are confronted with unique challenges. To understand what small business owners must overcome to build a successful enterprise, one need only consider that nearly half of small businesses fail in the first 2 years, and about half fail in the first 4 years. To help more small businesses succeed, my bill is designed to help small businesses train their employees, increase access to capital, encourage long-term investments in new technologies and equipment, expand opportunities to conduct research and development for the Federal Government, and finally, offer employee retirement plans.

The Small Business Innovation Research Program, commonly known as SBIR, is one of the most critical incentive that small businesses have used to invest in new technologies, expand their operations, and most important, create jobs. Under current law, small businesses are not able to use this provision’s funding for new or newly purchased stock. A 2004 report by the Council on Competitiveness highlighted small businesses’ difficulty in trying to access venture capital. The study found: "Recently, the funding gap has been widening as Venture Capital firms are shifting investments to focus on more mature firms with larger capital needs. Entrepreneurs report difficulty in raising money between $2 million and $5 million."

The third section of my bill extends a critical incentive that small businesses have used to invest in new technologies, expand their operations, and most important, create jobs. Under current law, small businesses are not able to use this provision’s funding for new or newly purchased stock. A 2004 report by the Council on Competitiveness highlighted small businesses’ difficulty in trying to access venture capital. The study found: "Recently, the funding gap has been widening as Venture Capital firms are shifting investments to focus on more mature firms with larger capital needs. Entrepreneurs report difficulty in raising money between $2 million and $5 million."

The fourth section of my bill would expand research and development opportunities for small businesses by increasing the amount of federal R&D opportunities available through the Small Business Innovation Research Program, SBIR, and the Small Business Technology Transfer Program, STTR. Small businesses are 13 to 14 times more patents per employee than large firms. Small business patents are twice as likely as large firm patents to be among the 1 percent most cited patents. These programs are critical to expand opportunities for small businesses to enter the Federal marketplace and in so doing, develop new products that can be commercialized and create new jobs. They play a major role in helping the government advance current law, enact the Small Business Administration, approximately 1 in 4 SBIR projects will result in the sale of new commercial products or processes.

The fifth and final section of my bill is designed to help small businesses offer retirement plans. Too many workers at small companies do not have the opportunity to contribute to their retirement security. Only 31 percent of small businesses with 10 to 24 employees provide retirement plans to their employees. In fact, 72 percent of large firms with 1,000 or more employees provide retirement plan options to their employees. As we
consider ways to help small businesses grow and be competitive, it is important to provide incentives that allow them to recruit and retain qualified employees and better compete with larger businesses at home and abroad that provide retirement plans for their employees.

The problem for small businesses stems, in part, from the administrative costs of starting a retirement plan. To address this problem, my bill doubles the existing tax credit to offset startup costs, with setting up new retirement plans. Under this bill, small companies would be eligible to take a 50 percent credit on the first $2,000 in approved costs incurred in each of the first 3 years of a qualified pension plan’s existence.

In conclusion, small businesses are the engine of our economy and we need to focus attention on advancing policies that help small businesses grow and prosper. I look forward to working with my colleagues on these and other proposals to help our Nation’s entrepreneurs continue to lead the world in innovation and compete effectively with large companies both here and abroad in the global economy.

By Ms. STABENOW (for herself, Mr. SMITH, Mr. LAUTENBERG, Mrs. MURRAY, Mr. MCCAIN, Mr. COLEMAN, and Mr. DAYTON):

S. 2115. A bill to amend the Public Health Service Act to improve provisions relating to Parkinson’s disease research; to the Committee on Health, Education, Labor, and Pensions.

Ms. STABENOW. Mr. President, today I rise to introduce the Morris K. Udall Parkinson’s Disease Research Act Amendments of 2005. I am pleased to be joined in this endeavor by my colleague, Senator SMITH, who co-chairs the Senate Parkinson’s Caucus with me, as well as Senators Murray, Lautenberg, McCain, and Coleman as co-sponsors.


SEC. 2. MORRIS K. UDALL PARKINSON’S DISEASE RESEARCH ACT OF 1997.

(a) FINDINGS.—Subsection (b) of section 603 of the Morris K. Udall Parkinson’s Disease Research Act of 1997 (42 U.S.C. 284f note) is amended by striking paragraph (1) and inserting the following:

(1) FINDINGS.—Congress finds that, to take full advantage of the tremendous potential for finding a cure or effective treatment, the Federal investment in Parkinson’s must be expanded, as well as the coordination strengthened among the National Institutes of Health research institutes.

(b) IN GENERAL.—The Director of NIH shall conduct a thorough investigation of all Parkinson’s-related research and shall include an outline of the manner in which to fully utilize the Udall Center program to ensure the continuation of a particular focus on translational research, including a clinical component.

(c) FUNDING.—The Secretary shall ensure that adequate funding is available under this section to carry out the activities described in the investment plan under subparagraph (B).

SEC. 3. COORDINATION AMONG INSTITUTES.

The Director of NIH shall conduct a thorough investigation of all Parkinson’s-related research and shall include an outline of the manner in which to fully utilize the Udall Center program to ensure the continuation of a particular focus on translational research, including a clinical component.

SEC. 4. REPORT TO CONGRESS.

The Director shall submit to the appropriate committees of Congress, the following:

(a) IN GENERAL.—The Director of NIH shall conduct a thorough investigation of all Parkinson’s-related research and shall include an outline of the manner in which to fully utilize the Udall Center program to ensure the continuation of a particular focus on translational research, including a clinical component.

(b) IN GENERAL.—The Director of NIH shall conduct a thorough investigation of all Parkinson’s-related research and shall include an outline of the manner in which to fully utilize the Udall Center program to ensure the continuation of a particular focus on translational research, including a clinical component.
Recognizing the need to accelerate the pace of Parkinson’s disease research, Congress passed the Morris K. Udall Parkinson’s Research Act of 1997 (Udall Act) and it was signed into law. The Udall Act Amendments builds on the historic 1997 Udall Act to strengthen and focus critical Parkinson’s disease research.

Your legislation will ensure that NIH-funded research will hasten discovery of better treatments and a cure for Parkinson’s disease. We believe the positive changes called for in the Udall Act Amendments will require the NIH to focus more of its Parkinson’s dollars on translational research and therapies, recognize the unique aspects of the U.S. Parkinson’s community, and give us a stronger understanding of who is impacted by this devastating disease and why. We are confident that the Udall Act Amendments will ensure that federally-funded Parkinson’s disease research brings the strongest return on investment possible and will ultimately lead to better treatments and a cure for the more than one million Americans fighting Parkinson’s disease.

The Parkinson’s community applauds your leadership and looks forward to working with you to ease the burden and find a cure for Parkinson’s disease. We thank you for your leadership and dedicated efforts on behalf of the entire Parkinson’s community.

Sincerely,

JOEL GERSTEL, President & CEO
American Parkinson Disease Association.

AMY COMSTOCK, President & CEO
The Parkinson’s Action Network.

The Michael J. Fox Foundation for Parkinson’s Research.

JOSEPH G. BERTOS, President
National Parkinson Foundation.

CAROL WALTON, President
The Parkinson Alliance.

Recognize the need to accelerate the pace of Parkinson’s disease research. Congress passed the Morris K. Udall Parkinson’s Research Act of 1997 (Udall Act) and it was signed into law. The Udall Act Amendments builds on the historic 1997 Udall Act to strengthen and focus critical Parkinson’s disease research.

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JOSEPH G. BERTOS, President
National Parkinson Foundation.

CAROL WALTON, President
The Parkinson Alliance.
Whereas Russian Federation President Putin has stated that “modern Russia’s greatest achievement is the democratic process (and) the achievements of our civil society”;

Whereas the unobstructed establishment and free and autonomous operations and activities of nongovernmental organizations and a civil society free from excessive government control are central and indispensable elements of a democratic society;

Whereas the free and autonomous operations of nongovernmental organizations in any society necessarily encompass activities, including political activities, that may be contrary to government policies;

Whereas international, and foreign nongovernmental organizations are crucial in assisting the Russian Federation and the Russian people in tackling the many challenges they face, including in such areas as education, infectious diseases, and the establishment of a flourishing democracy;

Whereas the Government of the Russian Federation has proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, including erecting unprecedented barriers to foreign assistance;

Whereas the State Duma of the Russian Federation is considering the first draft of such legislation;

Whereas the restrictions in the first draft of this legislation would impose disabling restraints on the establishment, operations, and activities of nongovernmental organizations and on civil society throughout the Russian Federation, regardless of the stated intent of the Government of the Russian Federation;

Whereas the stated concerns of the Government of the Russian Federation regarding the use of nongovernmental organizations by foreign interests and intelligence agencies to undermine the Government of the Russian Federation and the security of the Russian Federation as a whole can be fully addressed without imposing disabling restraints on nongovernmental organizations and on civil society;

Whereas there is active debate underway in the Russian Federation over concerns regarding such restrictions on nongovernmental organizations;

Whereas the State Duma and the Federation Council of the Federal Assembly to modify the legislation to ensure the unobstructed establishment and free and autonomous operations and activities of nongovernmental organizations in accordance with the practices universally adopted by democracies, including the provisions regarding foreign assistance.

SENATE CONCURRENT RESOLUTION 71—EXPRESSING THE SENSE OF CONGRESS THAT STATES SHOULD REQUIRE CANDIDATES FOR DRIVER’S LICENSES TO DEMONSTRATE AN ABILITY TO EXERCISE GREATLY INCREASED SAFETY CONSIDERATION WHEN DRIVING IN THE PROXIMITY OF A POTENTIALLY VISIONALLY IMPAIED INDIVIDUAL

Mr. AKAKA (for himself, Mr. INOUYE, and Mr. SALAZAR) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

Whereas many people in the United States who are blind or otherwise visually impaired have the ability to travel throughout their communities without assistance;

Whereas visually impaired individuals encounter hazards that a pedestrian with average vision could easily avoid, many of which involve crossing streets and roadways;

Whereas the white cane and guide dog should be generally recognized as aids to mobility for visually impaired individuals;

Whereas many states require candidates for driver’s licenses to associate the use of the white cane or guide dog with potentially visually impaired individuals; and

Whereas visually impaired individuals have had their white canes and guide dogs run over by motor vehicles, have been struck by the side view mirrors of motor vehicles, and have suffered serious personal injury and death as the result of being hit by motor vehicles: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that each State should require any candidate for a driver’s license in such State to demonstrate, as a condition of obtaining a driver’s license, an ability to associate the use of the white cane and guide dog with visually impaired individuals and to exercise greater increased caution when driving in proximity to a potentially visually impaired individual.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2677. Mr. MCCONNELL (for Mr. STEVENS) proposed an amendment to the bill S. 1390, to authorize the Coral Reef Conservation Act of 2000, and for other purposes; as follows:

On page 3, beginning in line 24, strike “impacts or other physical damage to coral reefs, including” and insert “impacts, derelict fishing gear, vessel anchors and anchor chains, or”.

SA 2678. Mr. MCCONNELL (for Mr. STEVENS) proposed an amendment to the bill S. 1390, to authorize the Coral Reef Conservation Act of 2000, and for other purposes; as follows:

On page 4, strike lines 14 through 19, and insert the following:

“(2) leverage resources of other agencies.”.

SA 2679. Mr. MCCONNELL (for Mr. AKAKA) proposed an amendment to the concurrent resolution H. Con. Res. 218, recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century; as follows:

Beginning in page 4, line 8, strike “requests that the President issue a proclamation calling on” and insert “urges”.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, December 15, 2005, at 10 a.m. on pending committee business.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Thursday, December 15, 2005, at 10 a.m., for a hearing titled, "Hurricane Katrina: Who’s In Charge of the New Orleans Levees?".

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to hold an off-the-floor markup during the session on Thursday, December 15, 2005, to consider the nominations of George W. Foresman to be Under Secretary for Preparedness, U.S. Department of Homeland Security, and Mary M. Rose to be Member, Merit Systems Protection Board.

Agenda

Nominations

(1) George W. Foresman to be Under Secretary for Preparedness, U.S. Department of Homeland Security.
(2) Mary M. Rose to be Member, Merit Systems Protection Board.
Post Office Naming Bills

(1) S. 1445, a bill to designate the facility of the U.S. Postal Service located at 520 Colorado Avenue in Arriba, CO, as the “William H. Emery Post Office.”

(2) S. 1792/H.R. 3770, a bill to designate the facility of the U.S. Postal Service located at 205 West Washington Street in Knox, IN, as the “Grant W. Green Post Office Building.”

(3) S. 1820, a bill to designate the facility of the U.S. Postal Service located in Tulsa, OK, as the “Dewey F. Bartlett Post Office.”

(4) S. 2036, a bill to designate the facility of the U.S. Postal Service located at 320 High Street in Clinton, IA, as the “Maciel Post Office.”

(5) S. 2064, a bill to designate the facility of the U.S. Postal Service located at 1000 McDonough Street in Franklin, TN, as the “Malcolm Melton Post Office.”

(6) S. 2080, a bill to designate the facility of the U.S. Postal Service located at 1271 North King Street in Honolulu, HI, as the “Lillian Kinkella Keal Post Office.”

(7) H.R. 2113, a bill to designate the facility of the U.S. Postal Service located at 2000 McDonough Street in Franklin, TN, as the “Malcolm Melton Post Office Building.”

(8) H.R. 2346, a bill to designate the facility of the U.S. Postal Service located at 105 NW Railroad Avenue in Hammond, LA, as the “John J. Hainline Post Office Building.”

(9) H.R. 2413, a bill to designate the facility of the U.S. Postal Service located at 1202 1st Street in Humboldt, TN, as the “Lillian McKay Post Office Building.”

(10) H.R. 2630, a bill to designate the facility of the U.S. Postal Service located at 1927 Sangamon Avenue in Springfield, IL, as the “J.M. Dietrich Northeast Annex.”

(11) H.R. 2884, a bill to designate the facility of the U.S. Postal Service located at 102 South Walters Avenue in Hodgenville, KY, as the “Abraham Lincoln Birthplace Post Office Building.”

(12) H.R. 3256, a bill to designate the facility of the U.S. Postal Service located at 3038 West Liberty Avenue in Pittsburgh, PA, as the “Congressman James Grove Fulton Memorial Post Office Building.”

(13) H.R. 3368, a bill to designate the facility of the U.S. Postal Service located at 6483 Lincoln Street in Gagetown, MI, as the “Gagetown Veterans Memorial Post Office.”

(14) H.R. 3439, a bill to designate the facility of the U.S. Postal Service located at 201 North 3rd Street in Smithfield, NC, as the “Ava Gardner Post Office.”

(15) H.R. 3548, a bill to designate the facility of the U.S. Postal Service located at 8501 Philadelphie Drive in Spring Hill, FL, as the “Staff Sergeant Michael Schafer Post Office.”

(17) H.R. 3825, a bill to designate the facility of the U.S. Postal Service located at 770 Trumbull Drive in Pittsfield, PA, as the “Clayton J. Smith Memorial Post Office.”

(18) H.R. 3830, a bill to designate the facility of the U.S. Postal Service located at 130 East Marion Avenue in Punta Gorda, FL, as the “U.S. Cleveland Post Office Building.”

(19) H.R. 3835, a bill to designate the facility of the U.S. Postal Service located at 545 North Rimsdale Avenue in Covina, CA, as the “Lillian Kinkella Keal Post Office.”

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 15, 2005, at 2:30 p.m., to hold a closed meeting.

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

PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that privilege of the floor be granted to Katie Winthrop, a detaillee from the Bureau of Land Management serving on my staff, for the remainder of this session.

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

RELATIVE TO THE DEATH OF FORMER SENATOR WILLIAM PROXMIRE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 334, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk reads as follows:

A resolution (S. Res. 334) relative to the death of William Proxmire, former United States Senator from the State of Wisconsin, is ordered to be engrossed.

The resolution.

Mr. FRIST. It is with deep sadness that I note the passing of the distinguished public servant, Wisconsin’s own William Proxmire.

William Proxmire was a man of fierce iconoclasm, robust physical energy, and strong moral fiber. During his 32 years of service in the Senate, he proved himself a friend to consumers everywhere and a steadfast enemy of Government wastefulness.

Born in Lake Forest, IL, as Edward William Proxmire, Senator Proxmire dropped his given first name as a youth and, indeed, the American public at large, began to call him William Proxmire.

Even as he aged, he stood by a sturdy regime of clean living: 100 pushups after waking up, long daily runs, a healthy diet, and early bedtimes.

Senator Proxmire was proud of the liberal, progressive politics he learned growing up in Wisconsin. But he also clung to a steadfast desire to protect the American taxpayer. His chaperone eagle eye on the Government budget earned him the admiration of many on this side of the aisle. Even today, he remains a hero to many in the tax reform movement.

William Proxmire proved himself an able public servant to the people of Wisconsin, the American taxpayer, and, indeed, the American public at large.

On behalf of my colleagues, I extend my deepest sympathies to the Senator’s wife Ellen and the entire Proxmire family.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be considered the same as the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD, without intervening action or debate.

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

The resolution (S. Res. 334) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 334) was agreed to.
The resolution, with its preamble, reads as follows:

S. Res. 334

Whereas William Proxmire served in the Military Intelligence Service of the United States Army from 1941 to 1946;

Whereas William Proxmire served the people of Wisconsin with distinction from 1957 to 1989 in the United States Senate;

Whereas William Proxmire served the Senate as Chairman of the Committee on Banking, Housing, and Urban Affairs in the ninety-fourth to ninety-sixth and one hundredth Congresses;

Whereas William Proxmire held the longest unbroken record for roll call votes in the Senate;

Whereas William Proxmire tirelessly fought government waste, losing monthly “Golden Fleece” awards beginning in 1975 for the biggest or most ridiculous or most ironic example of government waste;

Whereas William Proxmire worked endlessly to eradicate the world of genocide, culminating in the ratification by the Senate of an international treaty outlawing genocide.

Resolved, that the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable William Proxmire, former member of the United States Senate.

Resolved, that the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, that when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the Honorable William Proxmire.

TRANSFERRING PROPERTY TO THE SUPREME COURT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2116 introduced earlier today.

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

The bill (S. 2116) to transfer jurisdiction of certain real property to the Supreme Court.

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

Mr. MCCONNELL. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 2116) was read the third time and passed, as follows:

S. 2116

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

SECTION 1. TRANSFER OF JURISDICTION OVER CERTAIN REAL PROPERTY TO THE SUPREME COURT.

(a) Short Title—This section may be cited as the “Supreme Court Grounds Transfer Act of 2005”.

(b) Transfer of Jurisdiction

(1) In general—The jurisdiction over the parcel of Federal real property described in paragraph (2) (over which jurisdiction was transferred to the Architect of the Capitol under section 514(b)(2)(B)(i) of the Omnibus Parks and Public Lands Management Act of 1996 (40 U.S.C. 5102 note; Public Law 104-333; 110 Stat. 4165)) is transferred to the Supreme Court of the United States, without consideration.

(2) Parcel—The parcel of Federal real property referred to in paragraph (1) is that portion of the triangle of Federal land in Reservation No. 204 in the District of Columbia under the jurisdiction of the Architect of the Capitol comprising any contiguous sidewalks, bound by Constitution Avenue, N.E., on the north, the branch of Maryland Avenue, N.E., running in a northeast direction on the west, the major portion of Maryland Avenue, N.E., on the south, and 2nd Street, N.E., on the east, including the contiguous sidewalks.

(c) Miscellaneous

(1) Compliance with other laws.—Compliance with this section shall be deemed to satisfy the requirements of all laws otherwise applicable to transfers of jurisdiction over parcels of Federal real property.

(2) Inclusion in Supreme Court grounds.

Section 6101(b)(2) of title 40, United States Code, is amended, by inserting before the period “and that parcel transferred under the Supreme Court Grounds Transfer Act of 2005”.

(3) United States Capitol grounds.

(A) Definition.—Section 5102 of title 40, United States Code, is amended to exclude within the definition of the United States Capitol Grounds the parcel of Federal real property described in subsection (b)(2).

(B) Jurisdiction of capitol police.—The United States Capitol Police shall not have jurisdiction over the parcel of Federal real property described in subsection (b)(2) by reason of such parcel formerly being part of the United States Capitol Grounds.

(4) Recording of map of Supreme Court grounds.

The Architect of the Capitol shall record with the Office of the Surveyor of the District of Columbia a map showing areas comprising the grounds of the Supreme Court of the United States that reflects—

(A) the legal boundaries described under section 6101(b)(1) of title 40, United States Code; and

(B) any portion of the United States Capitol Grounds described under section 5102 of title 40, United States Code, which is contiguous to the boundaries or property described under subparagraph (A) of this paragraph.

(e) Effective date.—This Act shall apply to fiscal year 2006 and each fiscal year thereafter.

CORAL REEF CONSERVATION AMENDMENTS ACT OF 2005

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 294, S. 1390.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk reads as follows:

A bill (S. 1390) to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments.

(Srike the parts shown in black brackets and insert the parts shown in italic.)

S. 1390

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

SECTION 1. SHORT TITLE. This Act may be cited as the “Coral Reef Conservation Amendments Act of 2005.”

SECTION 2. EXPANSION OF CORAL REEF CONSERVATION PROGRAM.

(a) PROJECT DIVERSITY.—Section 204(d) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6403(d)) is amended—

(1) by striking “5 percent” in paragraph (2) and inserting “10 percent”;

(2) by striking “10 percent” in paragraph (2) and inserting “20 percent” and;

(3) by striking paragraph (3) and inserting the following:

“(3) Remaining funds shall be awarded for—

“(A) projects with priority given to community-based local action strategies that address emerging priorities or threats, including international and territorial priorities, or threats identified by the Administrator in consultation with the Coral Reef Task Force; and

“(B) other appropriate projects, as determined by the Administrator, including monitoring and assessment, research, pollution reduction, education, and technical support.”

(b) APPROVAL CRITERIA.—Section 204(g) of that Act (16 U.S.C. 6403(g)) is amended—

(1) by striking “or” after the semicolon in paragraph (9); and

(2) by redesignating paragraph (10) as paragraph (12); and

(2) by striking paragraph (10); and

(3) by inserting after paragraph (9) the following:

“(10) promoting activities designed to minimize the likelihood of vessel impacts on coral reefs, particularly those activities described in section 210(b), including the promotion of ecologically sound navigation and anchorages near coral reefs; and

“(11) promoting and assisting entities to work with local communities, and all appropriate governmental and nongovernmental organizations, to support community-based planning and management initiatives for the protection of coral reef systems; or”.

SEC. 3. EMERGENCY RESPONSE.

Section 206 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6404) is amended to read as follows:

“SEC. 206. EMERGENCY RESPONSE ACTIONS.

(a) IN GENERAL.—The Administrator may undertake or authorize action necessary to prevent or minimize the destruction or loss of, or injury to, coral reefs or coral reef ecosystems from vessel impacts or other physical damage to coral reefs, including damage from unforeseen or disaster-related circumstances.

(b) ACTIONS AUTHORIZED.—Action authorized by subsection (a) includes vessel removal and emergency stabilization of the vessel and any impacted coral reef.

(c) PARTNERING WITH OTHER FEDERAL AGENCIES.—When possible, action by the Administrator under this section shall—

(1) be conducted in partnership with other Federal agencies, including the United States Coast Guard, the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, and the Department of the Interior;

(2) leverage resources of such other agencies, including funding or assistance authorizations under other Federal law, such as the Oil Pollution Act of 1990, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Water Pollution Control Act.”

SECTION 4. NATIONAL PROGRAM.

Section 207(b) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6406) is amended—
(1) by striking “and” after the semicolon in paragraph (3);
(2) by striking “partners,” in paragraph (4) and inserting “partners;” and
(3) by adding the following:
“(5) activities designed to minimize the likelihood of vessel impacts or other physical damage to coral reefs, including those activities [described] identified in section 210(b).”.

SEC. 5. REPORT TO CONGRESS.

(a) In General.—Section 208 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6407) is amended to read as follows:

SEC. 208. REPORT TO CONGRESS.

“Not later than March 1, 2007, and every 3 years thereafter, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing all activities undertaken to implement the strategy, including—

“(1) a description of the funds obligated by each participating Federal agency to advance coral reef conservation during each of the 3 fiscal years next preceding the fiscal year in which the report is submitted;
“(2) a description of Federal interagency and cooperative efforts with States and United States territories to prevent or address overfishing, coastal runoff, or other anthropogenic impacts on coral reefs, including projects undertaken with the Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the United States Army Corps of Engineers;
“(3) a summary of the information contained in the vessel grounding inventory established under section 210, including additional coordination or funding, needed for response and removal of such vessels;
“(4) a description of Federal disaster response actions taken pursuant to the National Response Plan to address damage to coral reefs and coral reef ecosystems; and
“(5) an assessment of the condition of United States coral reefs, accomplishments under this Act, and the effectiveness of management actions to address threats to coral reefs.”.

(b) Clerical Amendment.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended by striking the item relating to section 208 and inserting the following:

“Vessel grounding inventory.”

SEC. 6. FUND; GRANTS; GROUNDING INVENTORY; COORDINATION.

(a) In General.—The Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by striking “organization solely” and all that follows in section 205(a) (16 U.S.C. 6404(a)) and inserting—

“(1) to support partnerships between the public and private sectors that further the purposes of this Act and are consistent with the national coral reef strategy under section 203; and
“(2) to address emergency response actions under section 206.

(b) by adding at the end of section 205(b) (16 U.S.C. 6404(b)) “The organization is encouraged to solicit funding and in-kind services from the private sector, including non-governmental organizations, for emergency response actions under section 206 and for activities to prevent damage to coral reefs, including activities described in section 201(b).”;

(2) by striking “the grant program” in section 205(c) (16 U.S.C. 6404(c)) and inserting “any grant program or emergency response actions”;

(3) by redesigning sections 209 and 210 as sections 212 and 213, respectively; and

(4) by redesigning section 210 as section 208 following the following:

SEC. 209. COMMUNITY-BASED PLANNING GRANTS.

(a) In General.—The Administrator may make grants to States that have received grants under section 204(c) to provide additional funds to such entities to work with local communities and through appropriate Federal and State partnerships and implement plans for the increased protection of coral reef areas identified by the community and (the best scientific information available) scientific criteria described in paragraph (3) of subsection (a).

(b) Terms and Conditions.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b)(1) to grants under this section, [26 percent] percent shall be substituted for 50 percent.

SEC. 210. VEssel GROUNDING INVENTORY.

(a) In General.—The Administrator may maintain an inventory of all vessel grounding incidents involving coral reef resources, including a description of—

“(1) the impacts to such resources;
“(2) vessel and ownership information, if available;
“(3) all that follows in section 204(g);”.

(b) Terms and Conditions.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b)(1) to grants under this section, [26 percent] percent shall be substituted for ‘50 percent’.

SEC. 211. REGIONAL COORDINATION.

(a) The Administrator shall work in coordination with the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives to develop and implement plans for the increased protection of coral reefs and coral reef areas identified by the community and (the best scientific information available) scientific criteria described in paragraph (3) of subsection (a).

(b) Terms and Conditions.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b) to grants under this section, [26 percent] percent shall be substituted for 50 percent.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

Section 212 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6408), as redesignated by section 6, is amended—

(1) by striking “$30,000,000 for each of fiscal years 2001, 2002, 2003, and 2004.” in subsection (a) and inserting “$30,000,000 for each of fiscal years 2001, 2002, 2003, and 2004.” in subsection (a) and inserting “$30,000,000 for each of fiscal years 2001, 2002, 2003, and 2004.” in subsection (a); and

(2) by striking paragraph (3) of subsection (a) and inserting “$30,000,000 for each of fiscal years 2001, 2002, 2003, and 2004.” in subsection (a); and

(3) by striking paragraph (3) of subsection (b) and inserting “$2,000,000 for each of fiscal years 2001, 2002, 2003, and 2004.” in subsection (b);

(4) by striking “December 15, 2005” in paragraph (3) of subsection (b); and


Mr. MCCONNELL. Mr. President, I ask unanimous consent the amendments at the desk be agreed to, the committee-reported amendments, as amended, if amended, be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The amendments (Nos. 2677 and 2678) were agreed to, as follows:

AMENDMENT NO. 2677

(Purpose: To strike references to certain laws)

On page 4, strike lines 14 through 19, and insert the following:

“(2) leverage resources of other agencies.”.

AMENDMENT NO. 2678

(Purpose: To make it clear that damage from derelict fishing gear and vessel anchors and anchor chains warrants emergency response action)

On page 3, beginning in line 24, strike “impacts or other physical damage to coral reefs, including” and inserting “impacts, derelict fishing gear, vessel anchors and anchor chains, or”.

The committee amendments were agreed to.

The bill (S. 1390), as amended, was read the third time, and passed as follows:

S. 1390

Be it enacted by the Senate and House of Representates of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be called the “Coral Reef Conservation Amendments Act of 2006”.

SEC. 2. EXPANSION OF CORAL REEF CONSERVATION PROGRAM.

(a) PROJECT DIVERSITY.—Section 204(d) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6404(d)) is amended—

(1) by striking “GEOPHYSICAL AND BIOLOGICAL” in the heading and inserting “PROJECT”; and

(2) by striking paragraph (3) and inserting the following:

“(3) Remaining funds shall be awarded for—

(A) projects (with priority given to community-based local action strategies) that
address emerging priorities or threats, including international and territorial priorities, or threats identified by the Administrator in consultation with the Coral Reef Task Force.

(2) other appropriate projects, as determined by the Administrator, including monitoring and assessment, research, pollution reduction, education, and technical support.

(b) APPROVAL CRITERIA.—Section 206(g) of that Act (16 U.S.C. 6405(g)) is amended—

(1) by striking "or" after the semicolon in paragraph (9);

(2) by striking paragraph (10); and

(3) by inserting after paragraph (9) the following:

"(10) promoting activities designed to minimize the likelihood of vessel impacts on coral reefs, particularly those activities described in section 211(b), including the promotion of ecologically sound navigation and anchorages near coral reefs; or

(11) promoting and assisting entities to work in conjunction with appropriate governmental and nongovernmental organizations, to support community-based planning and management initiatives for the protection of coral reef systems.

SEC. 3. EMERGENCY RESPONSE.

Section 206 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6405) is amended to read as follows:

SEC. 206. EMERGENCY RESPONSE ACTIONS.

(a) IN GENERAL.—The Administrator may undertake or authorize action necessary to prevent or minimize the destruction or loss of, or injury to, coral reefs or coral reef ecosystems from vessel impacts, derelict fishing gear, vessel anchors and anchor chains, or damage from unforeseen or disaster-related circumstances.

(b) ACTIONS AUTHORIZED.—Action authorized by subsection (a) includes vessel removal and emergency restabilization of the vessel and any impacted coral reef.

(c) PARTNERING WITH OTHER FEDERAL AGENCIES.—When possible, action by the Administrator under this section should—

(1) be conducted in partnership with other Federal agencies, including the United States Coast Guard, the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, and the Department of the Interior;

(2) leverage resources of other agencies.

SEC. 4. NATIONAL PROGRAM.

Section 207(b) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6406) is amended—

(1) by striking "and" after the semicolon in paragraph (3);

(2) by striking "partners," in paragraph (4) and inserting "partners; and"; and

(3) by adding at the end the following:

"(5) activities designed to minimize the likelihood of vessel impacts or other physical damage to coral reefs, including those activities identified in section 210(b)."

SEC. 5. REPORT TO CONGRESS.

(a) IN GENERAL.—Section 208 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6407) is amended to read as follows:

SEC. 208. REPORT TO CONGRESS.

"Not later than March 1, 2007, and every 3 years thereafter, the Administrator shall submit to the Committees on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing all activities undertaken to implement the strategy, including—

(1) a description of the funds obligated by each participating Federal agency to advance the strategy during each of the 3 fiscal years next preceding the fiscal year in which the report is submitted; and

(2) a description of Federal interagency and cooperative efforts with States and United States territories to prevent or address overharvesting, coastal runoff, or other anthropogenic activities on coral reefs, including projects undertaken with the Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the United States Corps of Engineers;

(3) a summary of the information contained in the vessel grounding inventory established under section 210, including additional criteria, guidance, or remediation plans for response and removal of such vessels;

(4) a description of Federal disaster response actions taken pursuant to the National Environmental Policy Act to prevent damage to coral reefs and coral reef ecosystems; and

(5) an assessment of the condition of United States coral reefs, accomplishments under this Act, and the effectiveness of management actions to address threats to coral reefs.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended by striking the item relating to section 206 and inserting the following:

"208. Report to Congress."
Providing Authorities for the Department of State

Mr. MccONNEll. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4436, which was received from the House.

The PRESIDING OFFICER. The bill is ready for consideration.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 218) to recognize the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century.

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

Mr. MccONNEll. I ask unanimous consent that the bill be read the third time and passed.

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

The bill (H.R. 4436) was read the third time and passed.

Order to Submit Tributes

Mr. MccONNEll. Mr. President, I ask unanimous consent that Senators be permitted to submit tributes to Senator (Governor-elect) Corzine for the recognition until December 29, 2005, and that they be printed as a Senate document.

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

Predisaster Mitigation Program Authorization Act of 2005

Mr. MccONNEll. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be discharged from further consideration of H.R. 3234, and the Senate proceed to its immediate consideration.

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

The legislative clerk read as follows:

A bill (H.R. 4324) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, and for other purposes.

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

Mr. MccONNEll. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be printed in the Record.

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

The amendment (No. 2679) was agreed to, as follows:

Beginning on page 4, line 8, strike "requests that the President issue a proclamation calling on" and insert "urges".

The concurrent resolution (H. Con. Res. 218), as amended, was agreed to. The preamble was agreed to.

Orders for Friday, December 16, 2005

Mr. MccONNEll. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on tomorrow, Friday, December 16. I further ask that following the prayer and the pledge the morning hour be deemed to have expired, the Journal of proceedings be appended to date, the time for the two leaders be reserved, and the Senate then proceed to a period of morning business for up to 30 minutes, with the Democrats in control of the first 15 minutes and the majority controlling the second 15 minutes.

I further ask that the Senate then resume consideration of the conference report to accompany H.R. 3199, the Patriot Act, and there be 60 minutes of debate equally divided between the majority and the minority, followed by a vote on a motion to invoke cloture on the conference report.

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

Program

Mr. MccONNEll. Tomorrow morning at approximately 11 o'clock, the Senate will have a cloture vote on the Patriot Act conference report. Senators should anticipate additional votes during tomorrow's session as we work through these last must-do items for this session. Executive items will also be considered as we work to complete action before breaking for the Christmas holidays. We will likely be in session through the weekend.

I thank Senators for their patience and hard work to get through the final stretch of activity for this session of the 109th Congress.

Adjournment Until 9:30 A.M. Tomorrow

Mr. MccONNEll. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order and as a further mark of respect to Senator William Proxmire.

There being no objection, the Senate, at 7:54 p.m., adjourned until Friday, December 16, 2005, at 9:30 a.m.

Nominations

Executive nominations received by the Senate December 15, 2005:

The Judiciary

Stephen G. Larson, of California, to be United States District Judge for the Central District of California, Vice Robert J. Timlin, Retired.

Department of Justice

Terence F. Flynn, of New York, to be United States Attorney for the Western District of New York for the Term of Four Years, Vice Michael A. Batalie, Resigned.
EXTENSIONS OF REMARKS

HONORING RETIRING CHAUTAUQUA COUNTY EXECUTIVE MARK THOMAS

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, for the past eight years, Chautauqua County government has been led by one of the singularly intelligent, committed, and respected public officials in New York State. Mr. Speaker, today I rise today to honor Mark Thomas, whose service as Chautauqua County Executive will be concluded on December 31, 2005.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Mr. Thomas traveled that path with his head held high and a smile on his face the entire way. I have no doubt that his kind demeanor left a lasting impression on the voters of Chautauqua County.

Mark is the type of person who leaves a lasting impact on his community. For many years, as a candidate and as an elected leader, Mark’s efforts to better Chautauqua County have left a permanent impression not only on the county itself but on its residents. His face, voice, and successes were and still are a staple in Chautauqua County. Our county and our residents are better off for the unyielding work and issues that Mr. Thomas uncovered during his campaign and during his tenure.

A true testimony to Mark can be found in many areas of the county and in many people whose lives he touched. One doesn’t have to look far to see what a strong work ethic can do. His campaign was full of energy and enthusiasm. I have no doubt that good things are still to come from Mark; he is a truly dedicated and determined person.

As a state legislator from 1998 to 2004, I knew Mark Thomas well. Quietly, without a lot of fanfare, Mark Thomas worked diligently for the reform of the Medicaid program, which has threatened to cripple county governments throughout New York State. In 2004, New York State began what is hoped to be a long process of providing Medicaid relief to local governments. No elected leader in New York State is more responsible for that success than is Mark Thomas.

I had the opportunity to get to know Mark even better in 2004, when we competed against one another in a primary election for the Democratic Party’s nomination for this congressional seat. Throughout that campaign, I always said that if I couldn’t win, I wanted Mark Thomas to win, because Mark is a true believer, someone who believes that government is in place to help people, and to help make one’s area a better place to live, work and raise a family. During that campaign, I was consistently amazed at the level of respect that the people of Chautauqua County had for him. During my first year in Congress, Mark and I have worked together closely on a number of projects important to Chautauqua County, and my respect for him, his dear wife Elaine and his family only continues to grow.

Mr. Speaker, in closing, I want to thank Mark Thomas. Mark has shown me the way in Chautauqua County, and I will forever be grateful to him for that gift.

Chautauqua County is blessed to have such strong individuals with a desire to make this county the wonderful place that we all know it can be. Mark Thomas is one of those people and that is why I rise to honor him and his service to this community.

HONORING THE GOVERNMENT STREET PRESBYTERIAN CHURCH ON THE OCCASION OF ITS 175TH YEAR

HON. JO BONNER
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. BONNER. Mr. Speaker, today I rise to pay tribute to the Government Street Presbyterian Church on the occasion of its 175th year.

Government Street Presbyterian Church has been a vital partner of the city of Mobile and the State of Alabama. The church was founded in 1831, and the present sanctuary was built in 1836. For 166 years, this congregation has been worshipping God from the same location. Designated a National Landmark, the oldest sanctuary in Mobile is one of the most beautiful buildings in the city.

True to its mission to glorify God, the congregation of the Government Street Presbyterian Church uses its resources and opportunities to provide hope, comfort, instruction, and inspiration to all people so that they may become followers of Jesus Christ.

For the past twenty years, the Government Street Presbyterian Church has lovingly served the people of Mobile through its Coffee Club and Meals on Wheels, providing 35,000 meals annually to the homeless and poor. Members are actively involved through urban ministries, international ministries, Baytreat ministries, worship, education, and fellowship.

It is my sincere hope that the Government Street Presbyterian Church will continue to be such a source of inspiration, hope, and comfort to Mobilians for another 175 years, and I rise today to salute this congregation and the many contributions they have made toward the betterment of south Alabama.

HONORING KEN LASKER FOR HIS CAMPAIGN TO BECOME CHAUTAUQUA COUNTY DISTRICT ATTORNEY

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, I rise today to honor Ken Lasker, a resident of Chautauqua County for his quest to become the Chautauqua County District Attorney.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Mr. Lasker traveled that path with his head held high and a smile on his face the entire way. I have no doubt that his kind demeanor left a lasting impression on the voters of Chautauqua County.

Ken is one of those people that leave a huge impact on his community. For many
years, both as a candidate or as an attorney at the law firm, Burgett and Robbins, his efforts to better Chautauqua County have left a lasting impression not only on the county itself but on its residents. His face, voice, opinions and successes were and still are a staple in Chautauqua County. Our county and our residents are better for the undying work and issues that Mr. Lasker uncovered during his campaign.

A true testimony to Ken can be found in many areas of the county and in many people whose lives he touched. One doesn’t have to look far to see what a strong work ethic can do. His campaign was full of energy and enthusiasm. I have no doubt that good things are still to come from Ken, he is a truly dedicated and determined person.

Chautauqua County is blessed to have such strong individuals with a desire to make this county the wonderful place that we all know it can be. Ken is one of those people and that is why, Mr. Speaker, I rise to honor him today.

PERSONAL EXPLANATION

HON. JIM COSTA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. COSTA. Mr. Speaker, on rollover Call No. 630, I would vote to put the House on record as opposed to torture of prisoners held by the U.S. government.

Had I been present, I would have voted “aye.”

RECOGNIZING MS. OLGA WAGNER’S VOLUNTEER WORK AT OVERLEA-FULLERTON SENIOR CENTER

HON. C. A. DUTCH RUPPERSBERGER
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. RUPPERSBERGER. Mr. Speaker, I wish to recognize Ms. Olga Wagner for her superior volunteer work at the Overlea-Fullerton Senior Center in Baltimore, Maryland. She has been a loyal aide to the center for close to thirty years; brightening the days of many seniors with her four hugs a day rule: Eat, Together lunch by preparing food and serving meals. She also contributes to the community by cashing-in bingo cards during games.

The Overlea-Fullerton Senior Center is a place for seniors, sixty and over, to gather taking advantage of activities and services such as line dancing, ceramics, painting, aerobics and much more. It is one of eighteen nationally accredited senior centers operated by the Baltimore County Department of Aging.

Because of the dependability Ms. Wagner has shown over the years, she was inducted into the Maryland Senior Citizens Hall of Fame on the twenty seventh of October, two-thousand five. Inductees are recognized statewide for their substantial volunteer work which ultimately benefits the community at large. Ms. Wagner’s dedication to improving the lives of seniors in her community is commendable and is a true testament to her character.

Mr. Speaker, I am proud to rise before you today to recognize the good deeds of Ms. Olga Wagner. Her contribution to seniors in the Overlea-Fullerton community is greatly appreciated and worthy of great praise.

HONORING SCOTT TUCKER

HON. NANCY PELOSI
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Ms. PELOSI. Mr. Speaker, it gives me great pride to recognize Scott Tucker for his leadership and extraordinary service to the City of San Francisco as he prepares to step down as District Manager of Customer Service and Sales of the San Francisco District of the U.S. Postal Service. Throughout his distinguished career with the Postal Service, he proved the San Francisco District leads the nation in postal quality control systems and customer service.

Scott joined the Postal Service in 1968 as a letter carrier in Hanford, California, and will bring his career to a close in January 2006. He was appointed District Manager in 1992, and has since earned the Postmaster General Award, the second highest award given to postal executives.

A business administration student at College of Sequoias, Sonoma State, Fresno State and Dartmouth College in Massachusetts, Scott used his education everyday supervising a workforce of 10,400 employees. Scott’s career is a shining example of excellence in commitment and service.

Throughout his 23 years as District Manager, Scott worked to raise awareness of the multi-cultural groups within our district by establishing a Women’s Council, an African American Council, an Asian American/Pacific Island Council and a Hispanic Council. These efforts earned him the Diversity Achievement Award from the Bay Area Federal Executive Board.

With the daunting responsibility of delivering 10 million pieces of mail to three million customers daily throughout northwest California, Scott was largely responsible for our City’s reputation as having one of the best on-time mail services of any metropolitan area in the nation. Scott was generous with his time and expertise to assist my District Office staff with constituent concerns.

Scott was instrumental in making the Lunar New Year commemorative stamp series a reality. His close partnership with San Francisco’s Asian American community helped produce a spectacular series of stamps for our City to take pride in, and for the rest of the nation to admire and enjoy. As Executive Chair of United Way’s Combined Federal Campaign in the Bay Area for two years, Scott was honored for his leadership and tremendous success.

Scott’s leadership and dedication remain an inspiration to all who knew and admired him. I join his friends and colleagues in sending best wishes for a well-deserved retirement and many years of health and happiness.

HONORING LORI CORNELL FOR HER CAMPAIGN TO BECOME CHAUTAUQUA COUNTY CLERK

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, I rise today to honor Lori Cornell, a resident of Chautauqua County for her quest to become the Chautauqua County Clerk.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Ms. Cornell traveled that path with her head held high and a smile on her face the entire way. I have no doubt that her kind demeanor left a lasting impression on the voters of Chautauqua County.

Lori is one of those people that leave a huge impact on her community. For many years, both as a candidate or as the District Director for Assemblyman Bill Parment, her efforts to better Chautauqua County have left a lasting impression not only on the county itself but on its residents. Her face, voice, opinions and successes were and still are a staple in Chautauqua County. Our county and our residents are better for the undying work and issues that Ms. Cornell uncovered during her campaign.

A true testimony to Lori can be found in many areas of the county and in many people whose lives she touched. One doesn’t have to look far to see what a strong work ethic can do. Her campaign was full of energy and enthusiasm. I have no doubt that good things are still to come from Lori, she is a truly dedicated and determined person.

Chautauqua County is blessed to have such strong individuals with a desire to make this county the wonderful place that we all know it can be. Lori is one of those people and that is why, Mr. Speaker, I rise to honor her today.

CONGRATULATING MR. WILLIAM W. WYNNE, JR. ON THE OCCASION OF HIS RETIREMENT FROM SERVICE TO THE FEDERAL GOVERNMENT AND HIS APPOINTMENT TO THE ALABAMA STATE BOARD OF PARDONS AND PAROLE

HON. JO BONNER
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. BONNER. Mr. Speaker, it is with great pride and pleasure that I rise to honor Mr. William W. Wynne, Jr. on the occasion of his retirement after serving south Alabama for nearly 30 years. I also rise to congratulate him on his appointment to the Alabama Board of Pardons and Paroles.

A Mobile native, Mr. Wynne has served as a U.S. Probation Officer for the Southern District of Alabama, a district encompassing 13 counties in southwest Alabama, since 1976. He has served as the district’s Chief U.S. Probation Officer since 1988. A nationally recognized leader, Mr. Wynne has overseen the district’s advances in court management and automation. His tireless work led to the development of the Internal Operating Policy on Disposition of Criminal Cases in his district.
In the midst of his demanding professional schedule, Mr. Wynne also found time to serve on a number of national committees: the Automation and Technology Users’ Group; the Problem and Pretrial Services Case Management and Statistics Umbrella Group; the Ad Hoc Task Force on Allotment Simplification; the committee on the National Law Enforcement Telecommunications System; the Electronic Public Access Working Group; the Chiefs’ Advisory Group; the District Court Advisory Group; the Budget and Finance Advisory Group; and the Law Enforcement Formula group.

Mr. Wynne is an outstanding example of the quality of individuals who have devoted their lives to the field of law enforcement. Mr. Speaker, I ask my colleagues to join with me in congratulating him on this remarkable achievement. I know Bill’s colleagues, his wife Laura, his family, and many friends join with me in praising his accomplishments and extending thanks for his many efforts over the years on behalf of the citizens of the First Congressional District and the state of Alabama.

ALLISON BIGGS—2005 PAMELA HARRIMAN FOREIGN SERVICE FELLOWSHIP

HON. FRANK R. WOLF
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. WOLF. Mr. Speaker, I am proud today to recognize and commend my constituent, Ms. Allison Biggs of Front Royal, Virginia, upon being selected as one of three recipients of the 2005 Pamela Harriman Foreign Service Fellowship. In 1999 the College of William and Mary in Virginia, in cooperation with the U.S. Department of State, established the Fellowship program to encourage top students to pursue careers in public service.

The fellowships are offered to three outstanding undergraduates from across the nation. Ms. Biggs, a senior at William and Mary, is an accomplished student and community leader. She was accepted for a highly competitive internship in the State Department’s Office of Policy Planning, working on nonproliferation and arms control issues.

Now more than ever, as a nation we need to do everything we can to encourage our best and brightest young people to explore the call of public service, especially in serving our international interests. The Harriman Foreign Service Fellowship program will help Ms. Biggs gain invaluable work experience, and I ask my colleagues to join me in honoring Allison for receiving this outstanding recognition.

CELEBRATING THE BIRTH OF COLE CHANDLER SWANSON CONATSER

HON. JOE WILSON
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. WILSON of South Carolina. Mr. Speaker, today I am happy to congratulate Elizabeth and Blake Conatser of Washington, DC, on the birth of their new baby son. Cole Chandler Swanson Conatser was born on November 20, 2005 at 2:51 p.m., weighing 9 pounds and measuring 20.5 inches long. Cole has been born into a loving home, where he will be raised by parents who are devoted to his well-being and bright future. His birth is a blessing.

HONORING ADOPTION ANGELS, WILLIAM ADDISON AND MARGURITE ADDISON

HON. C. A. DUTCH RUPPERSBERGER
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. RUPPERSBERGER. Mr. Speaker, on December 31, 2005, a dedicated public servant will end his years of service as a member of the Eden Town Board. That day will be the last day of Councilman Tim Walker’s service, and I want to take a moment to commemorate his service here today.

Tim Walker is a solid public official whose dedication both to his constituents as well as to the law is inspiring. With more than fifteen years of private sector legal experience, and after a stint as Eden Town Prosecutor, Tim Walker has concurrently served as a member of the Eden Town Board and as a member of that town’s school board. Tim’s service has been exemplary, as Eden has crept ever so slowly from its status as a very rural town to its status today, as a featured destination for many who seek to escape the hustle and bustle of city or first ring suburban life. Many people do this because Eden is a great place to live and raise a family; it is that way because of dedicated public servants like Tim Walker.

Tim Walker leaves the Eden Town Board because he chose to run for judicial office. Though unsuccessful in that run, many local residents are hopeful that Tim will remain an active member of the local community, and indeed, there is no reason to assume that he will not. Tim Walker is a fine public servant, and I am proud to honor him here today.

I want to thank you, Mr. Speaker, for offering me this opportunity to honor the public service of Tim Walker, and I hope that you will join me in offering to Mr. Walker the House’s best wishes of good luck and Godspeed in all of his future endeavors.

HONORING RETIRING EDEN TOWN COUNCILMAN TIMOTHY WALKER

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, on December 31, 2005, a dedicated public servant will end his years of service as a member of the Eden Town Board. That day will be the last day of Councilman Tim Walker’s service, and I want to take a moment to commemorate his service here today.

Tim Walker is a solid public official whose dedication both to his constituents as well as to the law is inspiring. With more than fifteen years of private sector legal experience, and after a stint as Eden Town Prosecutor, Tim Walker has concurrently served as a member of the Eden Town Board and as a member of that town’s school board. Tim’s service has been exemplary, as Eden has crept ever so slowly from its status as a very rural town to its status today, as a featured destination for many who seek to escape the hustle and bustle of city or first ring suburban life. Many people do this because Eden is a great place to live and raise a family; it is that way because of dedicated public servants like Tim Walker.

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I want to thank you, Mr. Speaker, for offering me this opportunity to honor the public service of Tim Walker, and I hope that you will join me in offering to Mr. Walker the House’s best wishes of good luck and Godspeed in all of his future endeavors.

HON. JULIA CARSON
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Ms. CARSON. Mr. Speaker, I rise today to congratulate Mr. Tony Stewart, winner of the 2006 NASCAR Nextel Cup Championship.

On November 20, 2005, Mr. Stewart won his second NASCAR Championship, becoming only the second active driver to win multiple NASCAR championships.

Today we recognize this Hoosier who has placed himself among the greatest drivers in the storied history of American racing. Tony Stewart’s passion for the track began as a young boy racing go-karts in his hometown of Columbus, Indiana. His win at the national karting championship in 1987 was a springboard to the Indianapolis Racing League, and a sign of triumphs to come.

In 1999 Mr. Stewart joined the NASCAR circuit, where he has ranked in the top 10 every season since. 2005 marks his most successful year on tour, with a total of five first-place finishes.

In August, Mr. Stewart underscored his strong and deep roots in the Hoosier state by winning the Brickyard 400 at Indianapolis Motor Speedway.

Today let us remember that Tony Stewart is respected by both fans and competitors not only for his racing prowess, but for his respect for and dedication to the sport of car racing.
I am proud to call Tony Stewart a fellow Hoosier, and I once again congratulate him on this remarkable accomplishment.

HONORING RETIRING HAMBURG TOWN SUPERVISOR PATRICK H. HOAK

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, it is my distinct honor to give great pleasure to rise today to honor one of Western New York’s premiere elected leaders, and someone who has given nearly twenty years of dedicated service to the residents and taxpayers of the town of Hamburg. I rise today to honor retiring Hamburg Town Supervisor Patrick H. Hoak.

Pat Hoak’s love for government service was sparked by the example of his father, the late State Senator Bertrand H. Hoak. Through the years, Pat has served Hamburg as a community leader, a sports and youth league coach, a teacher, and a longtime businessman. In 1987, however, he assumed more official duties in the town as a member of the Town Board.

First elected to the Town Board in 1987, Pat served as Councilman until his initial election as Town Supervisor in 1993. As Councilman, Pat put a great deal of focus on the expansion of recreational programs and facilities for town residents, including the expansion of the town’s golf course.

Starting in 1992 and for thirteen years afterward, Pat Hoak presided over one of the most efficiently-run town governments in New York State.

As Supervisor, Pat’s leadership resulted in the creation of nationally-acclaimed programs for Senior Citizens. His administration resulted in an unprecedented level of cooperation between government and the private sector in quality of life issues, including combating drug addiction and family violence. Working with other dedicated town leaders, Pat helped turn addiction and family violence. Working with other dedicated town leaders, Pat helped turn Hamburg into a model for town governments statewide, winning awards for fiscal responsibility and making Hamburg into a premiere suburban town for residents to live, work and raise a family.

The Hoak family has been very blessed over the years, and the family has given much back to the community it loves so dearly. For his nearly twenty years of public service and his many decades of community service, the town of Hamburg is better for the contributions made to it by Pat Hoak. We thank him for his service to our community, and wish Pat and his family all the best of good luck and God-speed in all of his future endeavors.

HONORING SSGT DANIEL CLAY, USMC

HON. JEFF MILLER
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. MILLER of Florida. Mr. Speaker, this week I attended the funeral of SSGt Daniel Clay, USMC, who was killed last week, 12/01/05, in Iraq. He was one of ten Marines killed by an IED in Fallujah, Iraq on December 1, 2005.

Dan’s father, Bud Clay, shared with me a letter his son wrote to his loved ones before he was killed. Accompanying his son’s letter was a letter Bud had written to President Bush. Mr. Clay asked me to take this to Congress and share with you so that we could all see Dan’s final thoughts and wishes.

May God Bless SSGt Daniel Clay, his family, our veterans, our troops, and the United States of America.

Mom, Dad, Kristie, Jodie, Kimberly, Rob, Kat, Richard, and my LISA: Boy do I love each and every one of you. This letter being read means that I have been deemed worthy of being with hope. With MaMa Jo, MaMa Clay, Jennifer . . . all those who have been without for our time during the race. This is not a bad thing. It is what we hope for. The secret is real! It is not faith that supports this . . . But fact and I now am a part of the promise. Here is notice! Wake up! All that we hope for is Real. Not a lie but Real. But here is something tangible. What we have done in Iraq is worth any sacrifice. Why? Because it was our duty. That sounds simple. But all of us have a duty. Duty is defined as a God given task. Without duty life is worthless. It holds no type of fulfillment.

The simple fact that our bodies are built for work has to lead us to the conclusion that God (who made us) put us together to do His work. His work is different for each of us. Mom, yours was to be the glue of our family, and that includes all those who walk in the shade of the tree (all those women around you), Dad, yours was to train and build us (like a Platoon Sgt) to better serve Him. Christie, Kim, Katy you are the five team leaders who support your Squad Idras, Jodie, Robert and Richard. Lisa you too. You are my XO and you did a hell of a job. You all have your duties. Be thankful that God in His wisdom gives us work. Mine was to ensure that you did not have to experience what it takes to protect what we have as a family. This I am so thankful for. I know what honor is. It is not a word to be thrown around. It has been an Honor to protect and serve all of you. I faced death with the secure knowledge that you would not have to. This is as close to Christ-like I can be. That emulation is where all honor lies. I thank you for making it worthwhile.

As a Marine this is not the last Chapter. I have the privilege of being one who has finished the race. I have been in the company of heroes. I now am among counted them. Never fail! Don’t hesitate to honor and support those of us who have the honor of protecting that which is worth protecting.

Now here are my final wishes. Do not cry! To do so is to not realize what we have placed all our hope and faith in. We should not fear. We should not be sad. Be thankful. He so thankful. All we hoped for is true. Celebrate! My race is over, my time in war zone is over. My trials are done. A short time separates all of us from His reality. So laugh. Enjoy the moments and your duty. God is wonderful.

I love each and every one of you.

Spread the word . . . Christ lives and He is Real.

SEMPER FIDELIS,
PENSACOLA, FL.
December 7, 2005.

President GEORGE BUSH,
The White House,
Washington, DC.

DEAR PRESIDENT BUSH: My name is Bud Clay. My son, SSGt Daniel Clay—USMC was killed last week, 12/01/05, in Iraq. He was one of the ten Marines killed by the IED in Fallujah.

Dan was a Christian—he knew Jesus as Lord and Savior—so we know where he is. In his final letter (one left with me for the family—to be read in case of his death) he says “if you are reading this, it means my race is over.” He’s home now—his and our real home.

I am writing to you—to tell you how proud and thankful we (his parents and family) are of you and what you are trying to do to protect us all. This was Dan’s second tour in Iraq. I was told by said that his being there was to protect us.

I want to encourage you. I hear in your speeches about “staying the course”. I also know that many are against you in this “war on Terror” and that you must get weary in the fight to do what is right. We and many others are praying for you to see this through—as Lincoln said, “that these might not have died in vain”.

You have a heavy load—we are praying for you.

God bless you,

Bud Clay.
CONGRATULATING TONY STEWART

HON. MIKE PENCE
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. PENCE. Mr. Speaker, I rise today to recognize fellow Columbus, Indiana native Tony Stewart, not only for winning the 2005 NASCAR Nextel Cup Championship this year, but also for consistency and determination to finish each race.

Before winning the 2002 Nextel Cup, Stewart declared, “If we’re going to win the championship, then we need to have consistency. . . . winning helps too, but consistency—front-running consistency is what it’s all about.”

Tony’s racing legacy began at age seven, Tony started his career like many young aspiring auto racing drivers: behind the wheel of a go-kart. In 1983, when Tony was 12, he won his first championship.

In 1989, Stewart moved from go-karts to open wheelers, winning his first championship in the National Midget category in 1994; followed by the U.S. Auto Club’s Tri-Crown the very next year.

It was in 1997 that Stewart began his NASCAR career, racing in both the Indy Racing League and a full Busch schedule with team owner Joe Gibbs.

By 1999, Stewart had taken the Winston Cup Racing Series by storm. That year the Indiana native debuted on the front-row of his first Daytona 500 and went on to score three more victories, more than any rookie driver in Winston Cup history. He also obtained two poles, 12 top-five finishes, and 21 top-10 finishes, snagging 1999 Rookie of the Year.

The hometown crowd was there this past August when Stewart, already a winner on short tracks, super-speedway and road course, capped an emotional day by clinching the Indianapolis Brickyard. And now, Stewart has out-dueled his rivals to take a second Nextel Cup title.

Congratulations, Tony. Just like 2002, you got the job done with consistency and determination that makes Hoosiers proud.

HONORING RETIRING BOSTON TOWN COUNCILMAN KARL J. SIMMETH

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, today I rise to honor a public official whose service as a member of the Boston Town Board has been honorable and whose dedication to his community has been steadfast. Today, I want to honor the service of Councilman Karl Simmeth.

Karl Simmeth served as a member of the Boston Town Board while his town continued to see growth and expansion, as more Western New Yorkers choose to live in towns beyond the first ring of Erie County’s suburbs. The town of Boston is well-known as a great place to live and raise a family, and it is so, in no small measure, because of the dedicated service of public officials like Karl.

Karl took his work on the town board very seriously. Karl’s areas of expertise included committees and other town board functions involving street lighting, the town’s Conservation Advisory Council, drainage and solid waste, and the oversight of South Boston Park. In short, Karl worked to deal with issues important to local residents.

Karl wears another hat in town, and that hat is political—he is Chairman of the town’s Republican committee. Accordingly, when it comes to matters political, Karl and I were rarely on the same side of the fence. However, when it comes to his love for the town of Boston and for his work on its behalf, Karl always checked his politics at the door. His work was always professional and I am grateful to him for his advocacy on the town’s behalf.

Mr. Speaker, when all is said and done, a public servant wants to leave government in better shape than when he or she came in; that is certainly the case here. The town of Boston is a better place for Karl Simmeth’s service, and I am pleased and appreciative to have had the opportunity to recognize him here today.

CONGRATULATING MS. ANNA BELLE NEWMAN ON THE OCCASION OF HER RETIREMENT

HON. JO BONNER
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. BONNER. Mr. Speaker, it is with great pride and pleasure that I rise to honor Ms. Anna Belle Newman on the occasion of her retirement after serving Mobile County for 17 years.

Ms. Newman was elected to the position of general administrator of Mobile County in 1998, and she is currently the longest serving local Republican elected official in Mobile County. A ninth generation Mobilian, Ms. Newman is a graduate of Murphy High School. She attended both the University of Alabama and Spring Hill College.

In the midst of her professional schedule, Ms. Newman also finds time to serve the community. She is an active member of St. Paul’s Episcopal Church, the Daughters of the American Revolution, the Colonial Dames of the 17th Century, and the Friends of Mobile. She is a former founding member of the Mobile Art Patrons League and a former member of the Mobile County Republican Executive Committee.

Mr. Speaker, I ask my colleagues to join me in congratulating a dedicated community leader and friend to many throughout south Alabama. I know Ms. Newman’s colleagues, her family, and her many friends join with me in praising her accomplishments and extending thanks for her many efforts over the years on behalf of Mobile County and the First Congressional District.
cannot be tolerated. We cannot secure this nation without securing its borders.

IN HONOR AND REMEMBRANCE OF ALEX HUMEL MCCANN

HON. DENNIS J. KUCINICH
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 15, 2005

Mr. KUCINICH. Mr. Speaker, I rise today to celebrate the life of Alex Humel McCann, cherished son, brother, grandson, cousin, nephew and friend to many, whose unexpected passing has saddened our entire community. Although he will be greatly missed, Alex’s young life had a profound impact upon the lives of countless individuals, in Cleveland, Ohio and around the world, and his inner light will shine on forever.

When Alex was in kindergarten, he journeyed with his parents and brothers to Botswana, Africa, to participate in a three-year mission with Habitat for Humanity International. In his 17 young years, Alex traveled to 17 countries and 5 continents. With an open heart, Alex absorbed the colorful offerings of every new culture and developed a profound sensitivity to human injustices and struggles that exist around the world.

An independent thinker and adventurous soul, Alex’s passion and joy for life paralleled his passion for helping others. As a student at St. Edward High School, Alex was an active member with the Council on Human Relations, the Free Thought Society and his most cherished activity, the St. Edward Wilderness Retreat Program. His diagnosis of epilepsy at age thirteen did not lessen his enthusiasm and energy for living. He was an avid cyclist, golfer, hiker, and camper. He was a talented young actor who graced the stages of the Athens Little Theatre and an accomplished pianist. Alex was an avid hiker, and camper. He was a talented young actor who graced the stages of the Athens Little Theatre and an accomplished pianist.

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Mr. Speaker and colleagues, please join me in recognizing Dora Bakoyannis whose work has not only brought physical transformation to Athens, but also a renewed sense of national pride for her citizens which reflects true leadership. We wish her continued success as she works to enhance the quality of life for all Athenians.

HONORING THE MEMORY OF MR. VICTOR A. MCSWAIN

HON. JO BONNER
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 15, 2005

Mr. BONNER. Mr. Speaker, the city of Mobile and indeed the entire state of Alabama recently lost a dear friend, and I rise today to honor him and pay tribute to his memory.

Mr. Victor A. McSwain was a devoted family man and dedicated community leader throughout his life. He was a native Alabamian and the son of Albert and Quintina McSwain. His energy and talent were consistently matched by his unique sense of humor, quick smile and kind heart.

Mr. Speaker and Colleagues, please join me in honoring the retirement of Alex Humel McCann, cherished son, brother, grandson, cousin, nephew and friend to many, whose unexpected passing has saddened our entire community. Although he will be greatly missed, Alex’s young life had a profound impact upon the lives of countless individuals, in Cleveland, Ohio and around the world, and his inner light will shine on forever.

Mr. McSwain began his 44 year career with the city of Mobile in his late teens. After serving in various positions, he worked his way up to the position of traffic engineer—a position he held for 17 years before becoming Mobile’s director of transportation. Mr. McSwain worked for the city while obtaining two college degrees—a bachelor’s degree in civil engineering from the University of South Alabama and a master’s degree in civil engineering from Penn State University.

In the midst of his intense professional schedule, Mr. McSwain also found time to serve in many community organizations. He served on both the city’s Planning Commission and the Metropolitan Planning Organization. Mr. McSwain was a past president of the University of South Alabama Alumni Association, the Crichton Optimist Club, and the Order of the Inca, a local Mardi Gras Society.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated community leader and friend to many throughout south Alabama. Mr. McSwain will be deeply missed by his family—his wife of 42 years, Barbara McSwain; his children, Angel Odom and Yvette Jones; and four grandchildren, Justin Jones and Kyle Odom and Kelsey and Melody Jones—as well as the countless friends he leaves behind. Our thoughts and prayers are with them all at this difficult time.

HONORING RETIRING CONCORD TOWN SUPERVISOR MARK STEFFAN

HON. BRIAN HIGGINS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 15, 2005

Mr. HIGGINS. Mr. Speaker, today I rise to honor a man whose years of service, both as a councilman, and for the last four years as Supervisor of the town of Concord, have served his town admirably. Today, I want to honor retiring Concord Town Supervisor Mark Steffan.

Mark Steffan is someone who loved his town with every fiber of his being. A successful businessman, Mark was elected to the Concord Town Board and his recent service as Supervisor has come at a time when more people in Erie County and Western New York look to the town of Concord and its incorporated village of Springville as an outstanding place to live, work and raise a family. It is that way because of the dedicated service of public officials like Mark Steffan.

Mark Steffan and his family are moving on with a planned move out of Western New York. I want to take this opportunity, Mr. Speaker, to commend Mark Steffan for his service to the residents and the taxpayers of the town of Concord, and remind him that local residents are better for the service he provided to town government.

TRIBUTE TO DORA BAKOYANNIS

HON. MICHAEL BILIRAKIS
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 15, 2005

Mr. BILIRAKIS. Mr. Speaker, today I rise to introduce a resolution calling for the observance of Global Family Day, One Day of Peace and Sharing.

Everyone in this body is concerned with finding a way to achieve peace. Peace in Iraq, peace in every corner of the world. Many of us have widely diverging views about how to achieve that peace—but I am confident—we all want peace.

We all have families back home who are longing for peace in the world and an end to the suffering caused by poverty, disease and hunger. Our friends, our neighbors, our parents and our children, all are hoping that this holiday season can bring more understanding, more generosity, more genuine friendship and caring among people of all faiths and cultures.

Perhaps we can agree on military strategies, but we can’t agree on budgets. Perhaps we can remain at odds on many matters when we come back after the holiday recess. But there’s one matter on which the Congress agreed in 2000 and which I believe a unanimous Congress can agree upon now.

Mr. Speaker, I am today introducing a concurrent resolution which calls upon all Americans to observe Global Family Day, One Day of Peace and Sharing every January 1st. It asks that we use the first day of every year as a time to reach out to others in the spirit of peace, to share a meal, to help the needy at home and around the world.

This is a matter that once agreed on by Congress, can lead to greater understanding.

INTRODUCTION OF A RESOLUTION URGING THE OBSERVANCE OF GLOBAL FAMILY DAY OF PEACE AND SHARING

HON. JOHN CONYERS, JR.
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 15, 2005

Mr. CONYERS. Mr. Speaker, today I rise to introduce a resolution calling for the observance of Global Family Day, One Day of Peace and Sharing.

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and cooperation among political parties, faith groups, people of different races and economic class. In other words, it’s something that can help us all—and that positive effect can begin during this holiday season.

In the year 2000, the Congress adopted a similar resolution asking the president to issue an annual proclamation recognizing this special day, and in 2001, following the tragedy of 9/11, the United Nations General Assembly followed suit. Heads of state in more than 20 countries have personally endorsed the initiative. However, there is little public knowledge that this important tool for peace already exists. Members of Congress can remedy that.

We all know how powerful an influence holidays have in our lives. Our earliest memories are often of family gatherings at Thanksgiving, or parades on the Fourth of July. Holidays teach us about the beliefs that our families hold, they inspire us, they reunite us and remind us annually about the ways in which we ought to behave.

As we approach the 20th anniversary next year of our national celebration of the life and teachings of Dr. Martin Luther King, Jr., I ask that the Congress take the time to ratify once again its recommendation that our increasingly interdependent world celebrate each year with a holiday of peace and sharing that belongs equally to all our human family.

Mr. Speaker, many Americans are troubled by our deteriorating image in the world, by the growing disputes among our elected leaders, by the dangers of terrorism and by the suffering of others, both at home and abroad. Yet they feel helpless to do anything about it.

Global Family Day provides a way in which every man, woman and child in the United States can help to reduce suffering at home, repair our damaged image abroad, and help us remember that in the end, all peoples belong to the same family.

I urge immediate action on this resolution.

CONGRATULATING THE HIGHLAND PARK TEAM TENNIS FOR WINNING THIRD STRAIGHT TEXAS CLASS 4A DIVISION I HIGH SCHOOL CHAMPIONSHIP

HON. PETE SESSIONS
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. SESSIONS. Mr. Speaker, I rise today to congratulate the Highland Park Scots Tennis Team for winning its third straight State Championship. On Saturday, November 5th, the Scots defeated New Braunfels High School 10–3 for the title. This program and its coach have shown an incredible amount of character since losing to San Antonio Alamo Heights in the 2002 state finals. They have not lost a single match since then, winning a state record seventy straight team matches.

The team of twenty-five varsity players (thirteen boys and twelve girls) is so filled with talent that Head Coach Dan Holden had reserve players who are nationally ranked on the sideline, an testament to the depth of this team. Coach Holden has not only prepared his players for the championship match, however; he has also helped them to seek higher education. This two-pronged approach to coach-

HON. JAMES A. LEACH
OF IOWA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 8, 2005

Mr. LEACH. Mr. Speaker, reluctantly I rise to oppose a bill which has a number of provisions I support and others which I might have been inclined to back in a different economic and historical context. But this Congress jeopardizes America’s fiscal house as it continues to “pay” for a war with tax cuts. This is, after all, the first time in our history—and perhaps the history of the world—in which a government has sent soldiers into combat at the same time it has reduced the public’s tax burden. And just as war cannot be paid for with tax cuts, social balance cannot be maintained if the costs of rebuilding one region of the country devastated by hurricanes are coupled with the reduction of support for needy citizens in other areas.

I am an advocate of tax simplification—the replacement of a deduction-centric tax code with a simplified lower rate system. But I have doubts about taking the radical step of eliminating social progressivity with a flat, single-rate tax. The complexity of the current system is the result of a myriad of tax rules, not the fact that rates are slightly staggered. What has been missed in today’s debate is that the taxation of dividend income at substantially lower levels than earned income means that the working middle class will be taxed at much steeper rates than upper-income citizens. The approach on the table today will not only eliminate tax progressivity, it will create an inverted tax system, one that is profoundly regressive.

No tax system can stand the test of common sense if a high school principal, elec-
decorated veteran, Chester Devenow received a degree in political science from New York University and attended Harvard Law School.

President Theodore Roosevelt noted “We demand that big business give the people a square deal; in return we must insist that when anyone engaged in big business is unethically responsible, he shall himself be given a square deal.” Chester Devenow earned this distinction among the industry’s titans.

We offer our sympathy to Maudette, loving wife of 27 years; his brother Leonard; sons Mark and John; daughter Susan; stepchildren William and Abigail Schachner; his six grandchildren; and his numerous friends. May they find some small peace as Chester Devenow joins his daughter Sara and the Creator of us all.

A TRIBUTE TO ROBERT THOMAS
HON. DORIS O. MATSUI
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Ms. MATSUI. Mr. Speaker, it gives me great pleasure today to honor Mr. Robert Thomas, the City of Sacramento’s City Manager, who is retiring this week from a distinguished career of public service. As his friends, family and co-workers all gather to celebrate his career, I ask all my colleagues to join me in honoring one of Sacramento’s finest citizens.

Mr. Thomas began his career in Sacramento with the North Highlands Recreation and Park District and later worked with the County of Sacramento, Southgate Recreation and Park District and City of Santa Cruz. At each step of his career Bob eagerly took on increased responsibilities for the recreational facilities that make Sacramento and California such a wonderful place to live.

In 1981, he returned to Sacramento as the Director of Parks and Community Services. For ten years Bob headed the department, managing over 600 employees and hundreds of volunteers. Under his direction the department increased revenue, grant funding and accomplished many important projects, including an expansion of the Crocker Art Museum.

Recognizing his management abilities, Bob was appointed Deputy City Manager in 1991, and he served in that position until being named Sacramento County’s Executive in 1996. While with the County, he implemented the Board of Supervisors’ policies and was ultimately responsible for managing over ten thousand employees and an annual budget of $1.4 billion dollars. Among the long list of achievements with the County, he was able to effectively reorganize the Economic Development Program and helped implement reuse plans at McClellan and Mather Air Force Bases, both of which were shut down.

From 1999 until the present day, the people of Sacramento have been incredibly fortunate to have Mr. Thomas serve as Sacramento’s City Manager. He has been an effective leader, working with the City Council on many issues of great importance. These include flood control projects, major transportation upgrades, and managing the development of many new neighborhoods. In recognition of his superb work, Mr. Thomas was named Public Administrator of the Year in 2005 by the American Society for Public Administration.

Bob was also an active member of the California National Guard 175th Medical Brigade until his retirement from the Guard this year. Given his extensive background in municipal government, work with the California National Guard and significant living in Sacramento, I was always confident that Sacramento was being taken care of with Bob Thomas at the helm, as was my late husband Congressman Robert Matsui.

Whether it has been with the California National Guard, the City of Sacramento, or with the City of Sacramento, Bob Thomas has left a legacy of successful public management and service that will be hard to match. On behalf of the people of Sacramento and the Fifth Congressional District of California, I ask all my colleagues to join me in thanking Bob Thomas for his public service and to wish him a healthy and happy retirement.

TRIBUTE TO JACK WILSON
HON. JIM DAVIS
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Jack Wilson, a prominent real estate developer, who helped the Tampa Bay area evolve into the vibrant, bustling community it is today.

Born in Royston, Georgia, Jack earned his bachelor’s degree from the Georgia Institute of Technology and his master’s degree from Harvard Business School. He came to Tampa in the 1970’s as Florida president of the Landmarks Group, but soon he was developing important projects through his own company, the Wilson Co.

Jack rapidly put his mark on Tampa. The cofounder and first president of the Westshore Alliance, Jack helped turn this area around and make Westshore a hub of business activity. Jack also worked on revitalizing Tampa’s downtown, renovating the Franklin Exchange and a number of office towers. Thousands of Tampa Bay residents have come to know Jack’s projects—whether they work in Bayport Plaza or Cypress Center, have visited the Grand Hyatt Tampa Bay, or reside in one of the thousands of affordable rental housing units that Jack built.

Tampa’s sports fans owe a huge debt of gratitude to Jack as well. He supervised the construction of the New York Yankees Legends Field, helped secure public funding for Raymond James Stadium and headed up the task force that brought Super Bowl XXXV to Tampa.

But Jack was always focused on more than just building his business. He also cared deeply about building up his community, and it showed in the quality of his work, the foresight in his development plans and the attention he paid to the impact of his projects on the environment. In fact, Jack was the first developer to receive an award from the Tampa Audubon Society.

Jack served Tampa’s business community as well, working as chairman of the Greater Tampa Chamber of Commerce and the Tampa Bay Partnership and volunteering his time for a long list of other business and charitable organizations. In 2001, he was inducted into the Tampa Bay Business Hall of Fame.

Those who had the privilege of getting to know Jack will remember his generosity, his Southern charm, his thoughtfulness and his constant willingness to help others. There is no doubt about it—Jack had an enormous impact on the community. On behalf of the residents of Tampa Bay, I would like to extend my deepest sympathies to Jack’s family. His legacy will live on not only in the structures he built but in the community he improved.

CFTC REAUTHORIZATION ACT OF 2005

SPEECH OF
HON. NYDIA M. VELÁZQUEZ
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 14, 2005

Ms. VELÁZQUEZ. Mr. Speaker, I rise to express concerns with Title II of H.R. 4473, which reauthorizes the Commodity Exchange Act (CEA). When the CEA was previously reauthorized in 2000, changes were made that brought much needed legal clarity to over-the-counter derivatives and foreign currency markets. The same legislative structure of U.S. futures exchanges was enhanced, providing a more flexible approach to the oversight of complex financial instruments. Together, these two developments provided a structure that has promoted the depth and breadth of U.S. capital markets throughout the world. Such vibrancy of U.S. capital markets is critical to creating new jobs, building wealth, and attracting investment.

While the reauthorization of the CEA is essential to the efficient functioning of our Nation’s capital markets, I am concerned that title II of H.R. 4473—while well intentioned—may disrupt the balance created through the reauthorization of the CEA in 2000. Title II of H.R. 4473 provides the Commodity Futures Trading Commission (CFTC) with expansive new powers that may be interpreted as applying the CEA to over-the-counter natural gas contracts. Doing so may jeopardize the legal certainty of certain natural gas contracts, potentially undermining the efficiency and robustness of the very markets that proponents of Title II are seeking to promote. The Federal Reserve and the Department of Treasury have raised similar concerns about this legislation.

In addition, other concerns have been expressed about H.R. 4473. Section 201 provides the CFTC with new market surveillance powers, which require the CFTC to investigate any highly unusual price changes in futures contracts for natural gas. Such new powers may not be the most appropriate policy response to address widely fluctuating natural gas prices. The Federal Reserve has noted that wide swings in natural gas prices are not a result of weak regulation, but rather due to supply and demand imbalances related to insufficient infrastructure necessary to produce and transport the underlying commodity. Further, section 202 imposes new position reporting standards on holders of natural gas futures or options contracts, requiring that records of such contracts be maintained for five years and provided to the CFTC as their request. These new requirements are not without costs, which could be significant and may be
passed on to homeowners and businesses. As a result, this provision could have the unintended effect of increasing costs on energy consumers.

By potentially expanding CFTC authority beyond that established in the 2000, serious questions have been raised about CEA’s scope. We are recommending and the package these new changes may have on energy consumers, investors, and industry participants. As this legislation heads to conference, I urge my colleagues to thoroughly discuss and address these issues and concerns so that we can be confident that our Nation’s capital markets remain strong and vibrant.

TRIBUTE TO SCOTT TUCKER
HON. LYNN C. WOOLSEY
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005
Ms. WOOLSEY. Mr. Speaker, we rise today to honor Scott Tucker, of Petaluma, California. On January 1, 2006, Scott will officially retire after 13 years as the San Francisco District Manager, and 38 years with the United States Postal Service. In addition, he is the longest serving postal service executive at any major metropolitan area in consecutive years.

Mr. Tucker’s career with the United States Postal Service began in 1968 in Hanford, California as a letter carrier. He held a succession of managerial positions in postal operations until in September 1992, he was appointed to his current position as the San Francisco District Manager.

As the District Manager, Scott is responsible on a daily basis for the delivery of approximately 10 million pieces of mail to 3 million customers throughout northwest California that ranges from Sunnyvale in the south to the Oregon Border in the north. He supervises a workforce of 10,400 mail carriers, mail handlers, mail clerks, postmasters, and operations managers. In the North Bay we have grown to approximately 3,000 employees spread throughout 205 postal facilities under Scott’s leadership.

The San Francisco postal district has for nine consecutive quarters, under Scott’s leadership, received the “Order of Yellow Jersey” award for excellence in customer satisfaction and commitment to professionalism. The district has been repeatedly recognized by IBM’s Business Consulting Services Unit, as one of the best on-time mail services for any metropolitan area in the Nation.

In the past 13 years, Scott has helped increase awareness of multicultural groups within the district. Under his leadership, numerous diversity leadership advisory councils were established including the Women’s Council, African American Council, Asian American/Pacific Islander Council, and the Hispanic Council. The Bay Area Federal Executive Board recognized his efforts and presented him with a diversity leadership achievement award.

Mr. Speaker, it is with great pleasure that we honor Scott Tucker today for the years he has dedicated to consistently improving upon how we all receive our mail. The San Francisco District of the United States Postal Service employees and customers will greatly miss him. He has left some very big shoes to fill.

TRIBUTE TO FRANKLIN REGIONAL HIGH SCHOOL PANTHERS FOOTBALL TEAM
HON. MELISSA A. HART
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005
Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate the Franklin Regional High School Panthers football team for winning the Western Pennsylvania Inter-scholastic Athletic League (WPIAL) 2005 AAA Championship.

The Panthers have had an excellent season with a record of 14 wins. The team, under the leadership of head coach Greg Botta, have worked incredibly hard in the season, and off season, to earn the title of WPIAL.

The Panthers travel to Central Pennsylvania on December 9, 2005 to play the Pottsville Area High School Tide for the AAA State Champion title. The game will take place at Hershey Park Stadium at 7 pm.

I ask my colleagues in the United States House of Representatives to join me in honoring the Franklin Regional High School Varsity Football team. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute the determined scholar-athletes, like the Panthers, and their dedicated coaching staff.

PATRIOT ACT
SPEECH OF
HON. RICHARD W. POMBO
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 14, 2005
Mr. POMBO. Madam Speaker, yesterday the House passed the conference report to H.R. 3199, reauthorizing the Patriot Act. While much has already been said about the national security aspects of this report, I would like to commend my colleagues for including the Controlled Substances Act as a part of this major law enforcement initiative in California’s 11th District.

All the law enforcement officers I meet with tell me that meth is the number one problem they face today. From manufacturers to dealers, and the attendant social crimes they create, meth is devastating communities across the country. Methamphetamine production and distribution leads to murders, assaults and property crimes. Additionally, there is an associated increase in domestic abuse, prostitution, child abuse and neglect, and homelessness. The provisions included in H.R. 3199 are a positive development in the fight against this scourge.

H.R. 3199 will repeal the so-called “blister pack exemption,” which currently allows the sale of unlimited quantities of pseudoephedrine. Pseudoephedrine and other major precursor chemicals in meth production will now be classified as “Schedule Listed Chemicals” with a daily purchase limit of 3.6 grams. These drugs will now be kept in locked cabinets at drug stores and other retailers. These measures will help reduce the manufacture of meth in the United States.

As meth is an international problem, the bill contains provisions for international monitoring, and funding for cooperative efforts with Mexico, a source of much of the meth in California. It also strengthens federal penalties against meth smugglers and traffickers.

Finally, there is language to ensure that employers registered under the Controlled Substances Act may ask prospective employees about prior drug convictions, as a safeguard to ensure that people with access to controlled substances do not pose risks to the public welfare. This clarification is necessary to stop the diversion of drugs for illegal purposes. Currently, in many states, employers are not allowed to ask this critical question.

Ms. WOOLSEY. Mr. Speaker, I rise today to honor Robert “Sonny” Smith who was recently inducted into the Babe Ruth Baseball Hall of Fame. Babe Ruth Baseball was started as a “grass roots” movement in the small, rural communities of America. The town of Las Animas is no exception, and like most towns, the Babe Ruth program has flourished because of the efforts and actions of volunteers like Sonny who stepped up to the plate to serve others.

Sonny’s involvement with Babe Ruth began around 1982. He was the District 2 Commissioner for 10 years and then became the Assistant State Commissioner for the 15 year-old Babe Ruth program. He has held that position from 1992 to the present time.

Sonny has not just been active in Babe Ruth in his community, but in other endeavors as well. He was the Las Animas Ball Association Vice President from 1978–1980. He served as a Las Animas City Councilman from 1982–1986 and was the chairman for the Parks and Swimming Pool committees. Sonny was a member of the Las Animas School Board from 1996–2000. He has been a member of the Bent County Recreation Committee from 1978 to the present time. He served on the St. Mary’s Catholic Church Council from 1988–1992, and he has served as a football, baseball, softball, and basketball official from 1978 to the present time.

One of Sonny’s most notable achievements was his work on the Ad Hoc Committee for building the new baseball field in Las Animas from 1998–2004. This field has hosted many area tournaments, as well as the local Babe Ruth League games.

Where does this man get the energy to accomplish these feats? I believe it comes from a strong desire to see the young people in his community and around the state have an opportunity to participate and excel in the great game of baseball.

Sonny has been a very valuable member of the Colorado Babe Ruth League, Inc. management team. His good-natured attitude and
"laid back" style have served him well when handling issues that come up at the various levels of tournament play. He has even worked on Babe Ruth Tournaments for the Midwest Region.

Because of Sonny’s love for kids and his commitment to the Babe Ruth program, he has been honored in the Colorado Babe Ruth Hall of Fame, and I am proud to represent such a fine individual in the U.S. Congress. I ask my colleagues to join me in congratulating Robert “Sonny” Smith for his outstanding contributions to his community.

ON “EXPRESSING THE SENSE OF THE HOUSE OF REPRESENTATIVES THAT THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DEPLORABLY INFRINGED ON PARENTAL RIGHTS IN FIELDS V. PALMDALE SCHOOL DISTRICT.”

HON. BETTY MCCOLLUM
OF MINNESOTA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Ms. McCOLLUM of Minnesota. Mr. Speaker, today this House considers a resolution to condemn a ruling by a United States Court of Appeals. Whether we agree with the Court’s decision or not, the Court returned its decisions based on Constitutional law. A Congressional resolution in reaction to the Palmdale School District’s part in the development and use of the survey tool would be the more appropriate role for this Congress. The Palmdale School District, not the Court, failed the parents and students. Parents have the right to a fair say in the type of education their child receives and the right to deny their child’s participation in surveys and research. Parents can only do so when they are given full and accurate information.

As a Member of Congress, it is my role to create, consider, and vote on legislation. The Court’s role is to rule on those laws. I will vote “present” on this resolution before us today because I believe strongly in the separate branches of our government and that Congress oversteps our role by denouncing the Court’s decision.

ONE FOR TINA DUBLIN

HON. HENRY CUELLAR
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. CUELLAR. Mr. Speaker, I rise today to celebrate the wedding anniversary of John and Frances Cuellar, a couple from South Texas who has been married for 50 years.

Mr. Speaker, John Cuellar and Frances Gonzales were both born during the Depression and derived great family values from having little to their name. Family, honesty and love have led them to 50 years of happiness. They met while they were independently involved in the Catholic Youth Organization in Cuero, Texas.

After they met, Mr. Cuellar joined the U.S. Navy and was sent to Maryland. The couple wed on Dec. 28, 1955 while John was home on leave for Christmas. They both moved to Maryland after their marriage to start their lives together.

After his tour in the Navy was over, Mr. Cuellar joined the Texas Highway Department and then transitioned into law enforcement with the Cuero Police Department. At the close of his professional career, he was employed with the U.S. Marshall’s office in Victoria, Texas. Mrs. Cuellar worked as a deputy county clerk and is now retired. She is a licensed nurse and prides herself on being so.

The Cuellar’s have four children, John Jr., Mike, Ronnie and Tina. They have fifteen grandchildren and five great grandchildren. Texas is honored to have such a fine couple who has served Southern Texas faithfully and diligently.

Mr. Speaker, I am proud to honor John and Francis Cuellar and I thank you for this time.

TRIBUTE TO CARDON AND JOYCE BERRY—2005 MERITORIOUS SERVICE

HON. MARILYN N. MUSGRAVE
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 14, 2005

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor Cardon and Joyce Berry, the 2005 4-H Meritorious Service Award winners. At the 2005 Kiowa County 4-H Achievement Banquet on Friday, November 4, 2005 the Meritorious Service Award was presented to a couple that believe in the 4-H program and the benefits and opportunities it offers to youth. They were both ten-year 4-H members and have devoted many years to helping leaders. They raised two children who were very active in 4-H and are now assisting their grandchildren who are active members in a local club today.

The Berry’s made an important decision to have their children participate in 4-H, knowing how much it had meant in their youth. Cardon grew up in Kiowa County and raised his own family in the same home in which he had lived. The 4-H Club he participated in was no more, but the community had once again found itself with many youngsters. The Berries helped to reinstate the Prairie Queen 4-H Club for the kids who benefited from the experience.

The Berry family is faithful in attending numerous 4-H activities, and have sponsored many trophies over the years. They are both active in many different civic roles within Kiowa County and they make their community a better place.

I am honored to be representing Cardon and Joyce Berry in the U.S. Congress. Individuals like this make 4-H and the youth who participate a valuable asset to the community. I’m sure Kiowa County will be blessed for many more years because of the selflessness of the Berry Family.

30TH ANNIVERSARY OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

HON. BETTY MCCOLLUM
OF MINNESOTA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Ms. McCOLLUM of Minnesota. Mr. Speaker, today I rise in support of this resolution celebrating the 30th anniversary of the enactment of the Education for All Handicapped Children Act and reaffirming Congress’s support for the Individuals with Disabilities Education Act (IDEA).

I believe strongly that Congress must provide the funding promised nearly 30 years ago for IDEA and that is why I support legislation that would fully fund this commitment to special education. All American children must have access to a free public education in an environment that is appropriate and supportive.

While this resolution today acknowledges the promise to our states and schools to fund IDEA at 40 percent of the average per pupil expenditure, it fails to address how far we are from making that goal a reality. This Republican-controlled Congress funds IDEA at less than 20 percent of its promise. We owe it to our students, their families, and our communities to make full funding a reality. I will continue to work with my colleagues on both sides of the aisle to fully fund our commitment to special education.

Because of the efforts of families, teachers, and school administrators across the country, we are, today, able to make the needs of students with disabilities a priority. It is time that
from parents, citizens and debutantes. Antonio. Each year accolades are received in the development of the Minority Community of San Antonio for standing leadership toward the growth and development of an ethnic group, and by 1927, these women envisioned a dream to present young, African American women to the public as dynamic women. They also knew that, in the United Negro College Fund, Inc and presented there was an urgency to preserve a bridge. One of the women, Vivian Lowery Vincent suggested that they start The Pals. The name derived from the phrase “pleasant attitude toward life.” Others soon joined the group, and by 1927, these women envisioned a dream to present young, African American girls approaching adulthood to society. This dream became reality when The Pals hosted the first Debutante Ball in 1928. The Club members believed that the social life of young Black women in San Antonio would be more secure by having, in their background, the interest of older, caring, dynamic women. They also knew that, in the goal for the perpetuity of African Americans, there was an urgency to preserve “gentility” within the race. Subsequently, The Pals selected and sponsored debutantes to develop and promote social and civic awareness, cultural dignity, and pride and sense of self. In 1979, The Pals were honored by the United Negro College Fund, Inc and presented the Fred D. Patterson Award and in 1992, the National Council of Negro Women, Inc honored The Pals for the organization’s outstanding leadership toward the growth and development of the Minority Community of San Antonio. Each year accolades are received from parents, citizens and debutantes.

Mr. Speaker, I am proud to honor The Pals for helping young women in our community.

HON. HENRY CUELLAR
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. CUELLAR. Mr. Speaker, I rise today to honor the 80th anniversary of The Pals, an organization in San Antonio, Texas that has been helping young black women enter adulthood with more ease and grace through their annual Debutante Ball.

Mr. Speaker, in 1925, four ladies were meeting weekly for a social game of bridge. One of the women, Vivian Lowery Vincent suggested that they start The Pals. The name derived from the phrase “pleasant attitude toward life.” Others soon joined the group, and by 1927, these women envisioned a dream to present young, African American girls approaching adulthood to society. This dream became reality when The Pals hosted the first Debutante Ball in 1928.

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HON. HENRY CUELLAR
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

HON. GEORGE RADANOVICH
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. RADANOVICH. Mr. Speaker, I rise to honor Chief Lonald Lott of Turlock, CA upon his retirement for his dedicated service to his community. Turlock Police Services will hold an event to honor Chief Lott on December 15th, 2005.

After serving in the United States Coast Guard, Lonald Lott entered law enforcement in 1973 as a reserve police officer for the City of Hayward. A year later, he moved to the Central Valley after having accepted a position as a police officer for the City of Modesto. In 1980, Officer Lott traveled slightly south to the City of Turlock to serve as a police officer. Having demonstrated tremendous leadership, Officer Lott was appointed to the position of Chief of Police in February of 1997. Chief Lonald Lott holds a Bachelor of Science degree in Organizational Behavior, a Master of Arts degree in Criminal Justice, and is a graduate of the FBI National Academy. Chief Lott has held leadership positions in numerous law enforcement organizations, including the California Police Chiefs Association, Stanislaus County Association of Law Enforcement Executives and has served as a member of the Stanislaus County Peace Officers Association, the California Peace Officers Association and the International Association of Chiefs of Police.

Chief Lott also serves as a part-time faculty member at California State University-Stanislaus where he teaches courses in Criminal Justice, Management, and Leadership.

Mr. Speaker, I rise to honor Chief Lonald Lott of Turlock, CA for his years of dedicated service. I invite my colleagues to join me in thanking Chief Lott for his tireless efforts and in wishing him many years of continued success.

HONORING CHIEF LONALD LOTT
HON. GEORGE RADANOVICH
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

HON. MEL KING
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mrs. MUSGRAVE. Mr. Speaker, I rise today to pay tribute to the patriotism and heroism of Mr. Mel King.

Mr. King served with distinction in the Army Air Corp during the harrowing days of the Second World War. As a B–17 crew member in the 815th Squadron of the 483 Bombardment Group, Mr. King and his fellow crew members played an integral role in the Allied defeat of Nazi Germany.

The crew of the Good Deal formed in November 1943 with Mr. Melbourne King of Crook, CO as one of the thirteen member crew, which included Paul E. Ray, Warren O. Griffin, Carl B. Hardy, Gerald Kramer, Foster F. Knight, James I. Korshak, Walter J. Gladejus, August O. Bresicz, Theodore Engelun, Fred A. Clark, Jr., Robert J. Dalzin, and John M. Spear.

On April 12, 1944 Mr. King and the crew of the Good Deal participated in their first mission to Split, Yugoslavia. In the following months, the crew of the Good Deal saw action over Toulon, Milan, Weiner Neustadt, Vienna, Budapest, Blechhammer, Ploesti, and Memmingen.

Despite the fact that fourteen of twenty-six American B–17s were lost over the German town of Memmingen on July 18, 1944, Mr. King and his crewmates successfully downed seven German fighters.

Mr. Speaker, I am proud of Mr. King’s distinguished service and humbled by his courageous patriotism. The sacrifices he and the men of the Good Deal made to ensure the liberation and freedom of future generations will never be forgotten. I urge my colleagues to join me in honoring Mr. Melbourne D. Ring and the crew of the Good Deal.

TRIBUTE TO MR. MEL KING
HON. MARILYN N. MUSGRAVE
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. LEVIN. Mr. Speaker, this Labor, Health and Human Services, and Education Appropriations bill is a very flawed bill which would badly underfund health care, education, and social services critical to all Americans. Although I was unable to vote in favor of the bill, I do want to call attention to one bright spot.

For the first time, the Congress has provided dedicated funding to educate women, their families, and their physicians about the risk factors and early warning signs of gynecologic cancer. Each year, tens of thousands of women die of gynecologic cancers that could have been treated had they been detected earlier. Ovarian cancer, the deadliest of the gynecologic cancers, has a survival rate of 80 to 90 percent if detected in Stage One or Stage Two and a survival rate of 20 percent or less in the late stages.

Although only cervical cancer has a screening test reliable enough for routine use on...
women without symptoms, gynecologic cancers have clear risk factors and early warning signs. A recent study found that almost 90 percent of women with early stage ovarian cancer had symptoms before being diagnosed. That's why public education is key—if women and their doctors know the risk factors and early signs, a specialist can use diagnostic tools to rule out cancer or detect it in the early stages.

I first became aware of the tremendous opportunity for the federal government to save lives when I heard the story of one of my constituents. Johanna Silver Gordon was a health-conscious public school teacher who died of ovarian cancer after being diagnosed in a later stage—leaving friends, family, and students heartbroken that they and she had not known the early warning signs. Unfortunately, her story is all too common. I first heard Johanna's story from her sister, Sheryl, and I introduced legislation to create Johanna's Law, a national public education campaign to eradicate gynecologic cancer death. Thanks to Sheryl's work and that of thousands of other tireless cancer survivors, family members, and physicians, Johanna's Law has the support of a majority of the House of Representatives and provided the inspiration for the language in this bill.

In this month of observance of American Jewish history, I think it is also important that we also focus on our country's relationship with Israel. Israel has been one of our strongest and most committed allies since its conception in 1948. For 50 years, the United States and Israel have worked closely to pursue peace in the Middle East. I strongly believe that the dream of peace and stability in the Middle East can become a reality within our lifetime.

I ask my colleagues to support this resolution and urge President Bush to issue a proclamation for the observance of an American Jewish history month. A proclamation by the President will honor the contributions of American Jews throughout our nation's history, but also reiterate the continued importance of our taking an active role in the peace process in the Middle East. We have both an obligation and a vested interest in supporting Israel in its road to secure itself in peaceful, stable, and democratic region. I will leave you with a quote from one of the most famous Jewish American immigrants, Albert Einstein. He said “He who cherishes the values of culture cannot fail to be a pacifist.” Let’s urge the President to reaffirm the value of the Jewish American culture in the United States, and in doing so take one small step towards peace in the region.

RECOGNIZING MR. GEORGE KAITSA
HON. PATRICK J. TIBERI
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005
Mr. TIBERI. Mr. Speaker, I rise today to recognize Mr. George Kaitsa for his dedication to public service as he prepares to return to private life.
Mr. Kaitsa has a record of dedicated public service as a Member of Council and leader for Powell, Ohio. I am certain that his foresight and commitment to building a brighter future for the citizens of Powell will continue to inspire others. Providing Powell with the best representation and leadership possible has always been George’s goal, and his service in office and commitment to his constituents over the years ensures his legacy will continue to be felt far into the future.

Thank you, George, for your service. Please allow me to join your friends and family in wishing you good health and prosperity.

WOOD CHIP CO-GENERATION SYSTEM TO HEAT AND POWER VERMONT HOSPITAL
HON. BERNARD SANDERS
OF VERMONT
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005
Mr. SANDERS. Mr. Speaker, I wanted to share with you some information regarding a bold new system that will help a small hospital in my state save hundreds of thousands of dollars annually in energy costs, while dramatically reducing greenhouse gas emissions and other environmental pollutants.

North Country Hospital in Newport, Vermont, has instituted an ingenious heating and electricity co-generation system that utilizes biomass wood chips instead of traditional heating oil as its fuel source. It is believed to be the first use of such technology in any hospital in the country. At today's energy prices, this new biomass gasification system could save the hospital as much as $326,000 annually in energy costs.

In addition to providing heat for the hospital complex, the process heats water from the chips into steam, which not only provides a supplemental source of electricity, but will produce the hospital's hot water and also help operate other critical equipment within the hospital, such as sterilization equipment, dishwashers and clothes dryers.

Energy cost savings realized by this environmentally sound energy choice will save the hospital, and hence its patients, substantial money that can be better directed toward critical healthcare services. This system provides an innovative example to hospitals and other public buildings in Vermont, across the country, and throughout the world.

Already, business people, government officials and hospital administrators from other regions are touring the new facility with an eye toward implementing such a system themselves. A company in Spain is designing a system based on North Country's model, with the expectation that it will actually burn tomato vines instead of wood chips as its energy source. Surely, a system so versatile has tremendous potential to be effectively used far and wide.

Wood chips are a renewable source of energy, which recycles carbon that already exists in the natural carbon cycle; meaning no new carbon dioxide is added to the atmosphere from this biomass energy source. Wood chips are supplied from within Vermont, hence money spent on wood chips stays in the local economy and supports jobs in the area's forest products industry. For buildings 50,000 sq. ft. and larger, fuel cost savings likely more than offset capital financing costs and additional maintenance staff time requirements; hence, in many cases, a system can pay for itself in 5 to 10 years.

I enthusiastically commend the Board of Trustees at North Country Hospital and their innovative staff, especially Larry Labor, Steve Wolff and Terry Robbins, for taking energy matters into their own hands and raising the bar for how local leadership can have national and international significance and positive impact. Each of them deserves high praise for their efforts. They have given us a sterling example of how American hospitals can save substantial money on energy costs, help improve environmental conditions related to heat
and energy production, and help support their local job markets in the process. I encourage other hospitals and institutions in Vermont and across the country to study the potential of this new system for their own facilities and to duplicate it where appropriate.

HONORING THE LIFE AND LEGACY OF HENRY KIRKSEY

HON. BENNIE G. THOMPSON OF MISSISSIPPI
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, I would like to recognize the life and legacy of Kirksey, former Mississippi State Senator, veteran proponent of civil rights and retired Tougaloo College professor.

Henry Kirksey personified the face of bravery. He was the lead plaintiff in most of the redistricting cases brought in Mississippi to bring the state into compliance with the 1965 Voting Rights Act in the late 1960s and early 1970s, when Mississippi was a dangerous place to do so. This was instrumental in opening the door to the creation of fair redistricting plans throughout the State. In 1965, Kirksey filed suit against the State, challenging county-wide election of State Representatives and Senators. That suit resulted in the adoption of single-member legislative districts in 1979.

We blacks elected in the State of Mississippi today owe that election more so to Henry Kirksey than anyone else. As a result of Kirksey’s sacrifice, Mississippi today appears to have more African American elected and appointed officials at every level of government than any other State in the Nation. Kirksey’s service as a plaintiff, expert witness and community organizer has led to the election of almost 600 African-Americans to public office in Mississippi. As part of this process, Kirksey became the first African American elected to the Mississippi Senate since Reconstruction.

He became known for filing the lawsuit that led to Jackson changing its form of government in 1985 to the mayor-seven-member council system. He also was a member of the group that fought for reapportionment changes in the late 1970s that led to a record number of black candidates being elected to the Legislature. Kirksey was instrumental in challenging the districts from which state court judges ran, resulting in more diversity on the bench.

As a noted map-maker, Kirksey was significant to the formation of Mississippi’s majority-black 2nd Congressional District, which I have the distinct pleasure of representing today. I applaud the life and legacy of Henry Kirksey.

SUPPORT FOR MILITARY TECHNOLOGICAL CAPABILITIES

HON. MICHAEL T. McCUAUL OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. McCUAUL of Texas. Mr. Speaker, I rise today to support a new technology in permanent, self-cleaning air filters for military vehicles operating in high-dust environments, such as in the Middle East.

A company in my district, Signature Science LLC, and its partners are proposing to adapt, integrate and fully test a new self-cleaning air filter technology developed for military vehicles that will save the Department of Defense millions of dollars annually by eliminating the cost of disposable air filters in addition to reducing maintenance costs of vehicle engines. Diesel engines on military vehicles currently use disposable air filters that require frequent maintenance. Operations on military vehicles will be slowed because the maintenance costs of engine vehicles.

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In fact, some of the military’s most innovative technologies are being developed by small companies. Two examples are in the 10th District of Texas, with each of these Austin-based companies developing a technology with significant military value. To accelerate the availability of these new technologies for military applications, I have recommended that funding support be included in the Department of Defense Appropriations Act for 2006.

One of the technologies is a unique 3-D holographic imaging system developed by Zebar Imaging, which will soon be deployed by the Army in Iraq for intelligence and operational uses. The $2.25 million requested for this technology would advance the current non-portable imaging system to a field deployable unit for combat forces, with this capability available within 24 months. Army intelligence and operational units have urged the acceleration of this development effort because of the strategic and tactical value to combat troops, which the requested funding seeks to achieve.

The second technology is in the field of micro-electronics and involves RF MEMS switches and relays under development by TeraVista Technologies. These micro devices, which provide enormous advances in the size, capabilities and performance of military electronics, are key to achieving faster and more powerful network communications, radar and satellite systems. The $2.25 million requested will accelerate TeraVista’s development work, specifically supporting a program to bring RF MEMS switches to a production-ready status and available for a variety of military applications.

These two technologies are recognized within the military as crucial developments, and I hope the Defense Appropriares provide the necessary funding to quickly bring them to operational use.

A NEW TECHNOLOGY IN PERMANENT, SELF-CLEANING AIR FILTERS FOR MILITARY VEHICLES

HON. MICHAEL T. McCUAUL OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

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for those diagnosed with this life-threatening disease. We need to improve state-by-state tracking of trends, incidences and prevalence of chronic Hepatitis B.

I urge all my colleagues to come together to prioritize this public health issue and support H.R. 4550.

RECOGNIZING GRANDPARENT-HEADED AND OTHER RELATIVE-HEADED HOUSEHOLDS

HON. MAURICE D. HINCHLEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HINCHLEY. Mr. Speaker, there are more than six million grandparent-headed and other relative-headed households in the United States. In my home state of New York, 9 percent of the children live with non-parent relatives. These relatives have opened their hearts and homes to children who can no longer be with their parents. During this holiday season, I would like to recognize these relatives for providing safety, shelter, food, and love. Their kindness and generosity is acknowledged. I extend my most sincere appreciation for the selflessness and generosity are acknowledged. I extend my most sincere appreciation for the selflessness and generosity they provide not only to the children under their care but also to the community at large.

HONORING CAREY HOBBS

HON. JEB HENSARLING
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HENSARLING. Mr. Speaker, today I would like to recognize the outstanding achievements of Mr. Carey Hobbs. I have had the pleasure of knowing Carey Hobbs for more than 20 years. He is a man who loves his country and cares deeply about his community. He is selfless and unassuming. He is a dedicated family man and a devoted Christian, and I am very proud to call him my friend.

Following his graduation from high school in Abilene, Texas, Carey Hobbs began his lifelong association with Texas Tech University as an undergraduate student. After earning his degree, Carey Hobbs joined the military in 1983 as an undergraduate student. After earning his degree, Carey Hobbs joined the military in 1983. He served in the United States Marine Corps. During his five years of active duty, he flew fighter jets and also served as a test pilot.

Over the course of his professional career, Carey Hobbs has become a successful small business owner and a leader in the textile industry. He is a true entrepreneur, who has helped drive innovation and job creation. Since 1972, he has been a member of the Board of Directors of the Texas Tech Alumni Association National Board of Directors. He has also dedicated his time to enriching higher education through his service on the Texas Higher Education Coordinating Board and as a participant in Texas A&M University’s Visiting Executive Program.

Carey Hobbs is an important and positive role for the youth of Texas. He is an active member of the Stonegate Community Church in Waco. He serves on the board of World Hunger Relief and the International Medical Education Foundation, which is working to build a hospital in the Ukraine. Carey Hobbs is also a devoted family man. He and his wife Brenda have five children: Larry, Terri, Angela, Andy and Cindy.

As the Congressman for the Fifth District of Texas and a longtime friend of Carey Hobbs, it is my honor to recognize him for his outstanding achievements in business and in life. Carey Hobbs has truly made his community and his country a better place.

TRIBUTE TO TEXAS STATE UNIVERSITY

HON. HENRY CUELLAR
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. CUELLAR. Mr. Speaker, I rise today to honor the achievements of the Texas State University Football Team that made it all the way to the semi-finals of the Division 1-AA playoffs.

Mr. Speaker, Texas State University, which is located in San Marcos, Texas, represented their school with tremendous pride and ability. The Bobcats finished with an 11-3 record and a Southland Conference championship, their first conference championship since 1983.

In only his second year, Head Coach David Bailiff and staff have taken the Bobcats from a good record in 2004 to a great one in 2005. Coach Bailiff and his staff will attempt to bring the national championship to San Marcos next year, a title that would be a restoration of the powerful tradition of Division II national championships in prior years.

Texas State football players have made their school proud off the field as well. Several players have spent time in area San Marcos elementary schools mentoring the children in the community. The team was also honored to have six students selected to the conference’s All-Academic team, a testament to the dedication the coaches and players have to achieve in the classroom as well.

Mr. Speaker, I am proud to celebrate Texas State’s outstanding football season and I thank you for this time.

IN RECOGNITION OF BARBARA CONACCHIO

HON. GARY L. ACKERMAN
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. ACKERMAN. Mr. Speaker, I rise today in recognition of Barbara Conacchio, who will be honored by the Queens Board of Elections on January 26, 2006 for her 25 years of dedicated service.

Barbara’s career with the Queens Board of Elections began in January of 1981, when she was hired as a temporary employee. Less than a week later, realizing what a great asset Barbara was, the Board of Elections offered her a permanent position. Seven years later, in 1988, the Board once again recognized her outstanding work and promoted Barbara to Administrative Assistant, where she performed masterfully. In June of 1991, she was appointed as Chief Clerk of the Queens Board of Elections. Over the past fourteen years, Barbara has held this post with remarkable poise, leadership and distinction.

Despite her hectic career, Barbara has voluntarily served our community through a number of organizations. She is President of the Knights of Columbus—General Father Sherman Shine Columbiettes, a member of the Queens Historical Society, and Secretary of the Board of Directors of the Mitchell Gardens Co-op.

While Barbara has had a distinguished and praiseworthy career at the Board of Elections, and is celebrated as a community leader, her family—her husband of 30 years, Ronald, along with her two daughters, Amanda and Lisa, and two granddaughters, Brianna and Tiffani—remains the source of her greatest pride and inspiration.

Mr. Speaker, it is with great satisfaction that I rise to commend Barbara Conacchio. The accolades bestowed upon her for the 25 years of outstanding service she has given to the Queens Board of Elections are entirely deserved. I know all my colleagues in the House will join me in honoring Barbara for her outstanding work and wishing her many more years of success.

TRIBUTE TO DORENA KNEPPER

HON. BRAD SHERMAN
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. SHERMAN. Mr. Speaker, I rise today on behalf of myself and my California colleague Howard “Buck” McKeon to honor a talented individual, Dorena Knepper, on the occasion of her retirement as director of Government Affairs at California State University, Northridge. Due to too small part to Dorena’s hard work, guidance and support, CSUN has become one of the most prominent universities in the California State University system.

Just last year we congratulated Dorena upon the celebration of her 40 years of public service at CSUN. During her impressive tenure, Dorena has made an exceptional contribution both to the university and to the greater community. Working with her on Federal appropriations and other legislative
URGING MORE AID TO PAKISTAN FOR EARTHQUAKE VICTIMS

HON. KENDRICK B. MEEK
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. MEEK of Florida. Mr. Speaker, I rise to draw the attention of my colleagues to the growing tragedy in Kashmir, a northern region of Pakistan located along the Indian border. In early October of this year, an earthquake devastated that area, killing tens of thousands of people and leaving millions more homeless. Each passing day brings new heartbreak to that remote region as exposure, illness, and famine continue to wreak havoc on the population. People are desperate, and they need our help.

The earthquake’s epicenter hit Muzaffarabad, the regional capital, and registered a magnitude of 7.6 on the Richter scale. For comparison, the 1989 earthquake that hit San Francisco had a magnitude of 7.1 and its epicenter was more than 70 miles away. The Pakistani Government has reported that at least 73,000 people have died, 15,000 they believe to be school children. The World Bank and the Asian Development Bank reported in their assessment after the quake that at least 3.5 million people have been displaced, and that another 1.6 million are without adequate food supplies.

This mountainous region of Pakistan lies at the foothills of the great Himalayan Mountains. The area receives as much as 10 feet of snow during the winter months, and nighttime temperatures can easily drop to 50 degrees Fahrenheit below zero. As winter quickly approaches, the severe potential for further catastrophe grows for the millions of homeless Pakistanis living in makeshift tent communities.

Mr. Speaker, the earthquake that devastated the capital city and surrounding communities disastrously separated brother from sister, parent from child, and destroyed the lives and livelihoods of countless families. The United Nations and international aid agencies have speculated that the tragedy of the quake’s aftermath could surpass that of the tsunami that struck just months earlier given the region’s severe climate, remoteness, and the shortfall of international assistance. Without immediate action by the international community, thousands more will surely perish.

The World Bank estimates that $5.2 billion will be needed to adequately rebuild the region and care for the quake’s victims. The Bush administration has provided $50 million in emergency assistance and pledged another $150 million; however, more is needed. For this reason I have written to President Bush requesting that he double his request to Congress, and provide $300 million towards Pakistani reconstruction.

The United States and Pakistan have long worked together, and jointly we are fighting the ongoing war on terror. In addition, additional aid from our country would send a signal to other nations that the United States stands ready to help in times of need. Mr. Speaker, I call upon my colleagues in the House to strongly support measures that would send addition aid to help alleviate the suffering the Pakistani people.

HON. MARK UDALL
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. UDALL of Colorado. Mr. Speaker, I want to explain why I sought and obtained unanimous consent to have my name removed as a cosponsor of H.J. Res. 73, a resolution introduced by my friend and colleague Rep. JACK MURTHA calling for the rapid withdrawal of American forces from Iraq.

In short, my name was added in error, but I’d like to take this opportunity to explain why I cannot support Mr. MURTHA’s resolution at this time.

Rep. MURTHA’s call for the rapid redeployment of U.S. forces carries significant weight in Congress because he is not only a decorated veteran, but also one of the most respected voices in our country on military and national security policy.

Like Rep. MURTHA, I believe the Bush administration has largely failed in Iraq because the civilian direction of the war has not matched the skill and sacrifice of our soldiers. Going to war the way we did was a strategic mistake, and the aftermath has been a failure because of the president’s refusal to plan and resolve.

Unlike Mr. MURTHA, I voted against the resolution authorizing the president to rush to war in the first place. I did so because I had concerns about the president’s refusal to consider more aggressive inspections of WMD before going to war, his inability to secure greater international support, his obvious failure to develop a plan for securing peace after ousting Saddam, and his reckless disregard of experienced military advice.

Although I was an outspoken opponent of going to war in Iraq, I have supported our brave soldiers because it has seemed to me that our national security is now linked, like it or not, to a credible plan for stabilizing Iraq and preventing a catastrophic civil war in the region.

I remain concerned about setting an arbitrary date for withdrawal because how we leave is as important as when we leave. Nevertheless, Mr. MURTHA’s call, coupled with the evaporation of public confidence in the president’s management of the war, should be a wake-up call to the president to develop a strategy that can garner bipartisan support and set an unmistakable path toward exiting Iraq expeditiously and with our interests and security intact.

This country cannot have 535 commanders-in-chief. There can only be one commander-in-chief, and we need him to explain his strategy and to be honest with the American people about the costs and timetable for executing that strategy.

We were led into war as a divided nation and today we are even more divided. A successful outcome in Iraq can only be helped if Congress and the Bush Administration work to bring unity at home. In a hopeful sign, that kind of unity was on display when the Senate recently passed with overwhelming bipartisan support a resolution requiring accountability by the president in Iraq. The House should, at a minimum, do the same.

HON. RALPH M. HALL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. HALL. Mr. Speaker, I am saddened to announce the passing of a great Texan, Henry Cushing “Hank” Grover, a man of singular vision and integrity. Born of humble roots in Corpus Christi, Texas, and raised in San Antonio during the Great Depression, Hank understood what it was to be humble and poor.

The middle child of eight, Hank was raised with solid grounding in those values Americans hold dear. His mother was a German immigrant, and his father was a descendent of Irish roots. Hank was a sixth generation Texan, whose family predated even the Republic of Texas. His great-great-grandfather was the first European doctor on Texas soil, and his studies of Kickapoo medicine are archived in The University of Texas library. His
For the Pacific Strike Team, quick response to emergencies is normal operating procedure. On the night of August 29, Commander Anthony Lloyd and a dozen or so members of the team flew out of California to join the two other units of the National Strike Force at the forward operating base in Alexandria. In the following week, the coasties worked in the largest oil cleanup spill since the Exxon Valdez, containing oil spills from 8 or 9 refineries on the Mississippi and the Gulf. With oil spill cleanup almost completed, the Pacific Strike Team has joined the Louisiana environmental officials and the U.S. EPA in an effort to remove hazmat materials scattered along Louisiana’s broad coastal zone. To date this unified command, combining the wetlands and bayous, have collected about 1 million commercial 55 gallon drums.

In an emergency, the Coast Guard also relies on its personnel stationed at bases and at sea. everyone lends a hand.

Coast Guard Training Center Petaluma, commanded by Captain Brian Marvin, is no exception. Nine Two Rock coasties have responded to the Gulf where they performed a variety of duties which exemplify the diverse mission of the Coast Guard. Two chaplains helped with spiritual support and stress management both for hurricane victims and responders; a doctor helped to mend bodies at a relief center in New Orleans; an officer was sent to be in charge of a relief boat command and control center; another officer was sent as a planner; two petty officers served in law enforcement, repairing aids to navigation and participating in search and rescue operations; and another petty officer conducted incident debriefings and helped develop support systems for personnel out in the field.

All these activities were conducted with the highest professionalism, dedication, and compassion—Coast Guard hallmarks. They deserve the highest praise and ongoing support for their mission.

CONFERENCE REPORT ON H.R. 3199, USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005

I think the value of such “sunset” provisions is shown by the debate on that bill and today’s debate on the conference report. It is evidence that requiring Congressional action to renew agencies’ authorities can and does result in ongoing Congressional oversight and periodic reconsideration.

I voted against the bill because it would have made permanent no fewer than 14 of the 16 provisions of the original “Patriot Act” that were covered by the law’s “sunset” clause—as well as other new authorities provided by last year’s bill to reform the intelligence community—and under the bill the other two would not have faced a “sunset” for a full 10 years.

However, at the same time I noted that there was considerable support in the other body—by Senators on both sides of the aisle—for provisions that would improve on this legislation. And I hoped and expected that once the Senate had acted and the conference was completed, the result would be a measure that deserves the support of all Members of Congress.

Unfortunately, after careful review I have concluded that this conference report, while an improvement over the bill the House passed in July, is still so seriously flawed that I cannot support it.

The conference report does not do enough to reduce the potential that the authority it gives to the FBI and other agencies could be abused or misused in ways that intrude on Americans’ privacy and civil liberties—a potential that has led more than 300 communities and seven States, including Colorado—governments representing over 62 million people—to pass resolutions opposing parts of the Patriot Act.

The Senate, to its credit, did a better job than the House in responding to the concerns that prompted such resolutions, while still providing ample tools that the government can use to work against the threat of more terrorist attacks, at home and abroad.

I could have supported enactment of the bill as passed by the Senate. That is why I voted for the motion to recommit. But I cannot support this conference report as it stands.

COMMENDING WWII VETERAN HARRY THOMPSON

HON. RALPH M. HALL OF TEXAS IN THE HOUSE OF REPRESENTATIVES

THURSDAY, DECEMBER 15, 2005

Mr. HALL. Mr. Speaker, it is a privilege to recognize Harry A. Thompson, a veteran of World War II and a WWII Prisoner of War. Harry is a longtime resident Wolfe City, Texas, and for the past fifty years has been working on his memoirs of his experience as a POW in Germany. His book, entitled Patton’s Ill-Fated Raid, relates how he fell into enemy hands on the second day of the Battle of the Bulge and the events that transpired thereafter.

Chief Warrant Officer Harry Thompson was a Battalion Personnel Officer assigned to the 116th Gas Company of the 11th Coast Artillery Division in Bullingen, Belgium, when the German Army broke through the American lines during the Battle of the Bulge, and he was captured. He was taken to Hammelburg,
the German POW camp for American officers where General Patton’s son-in-law also was being held. As a result of the ill-fated raid to liberate the POWs in Hammelburg, all POWs were evacuated from camp and were forced to walk a treacherous journey of 241 miles in subzero weather across Germany before their liberation on May 2, 1945.

Mr. Thompson’s account of his harrowing experiences at Hammelburg and during this long march is a sobering reminder to readers of the sacrifices of our men and women in uniform. In his introduction he wrote, “The fiftieth anniversary of the Battle of the Bulge has passed. World War II seems ancient history to my grandchildren as much as the Civil War seemed to me when I was growing up. This narrative is for my family as much as for the public, a memoir of a horrible time, the likes of which I hope they will never have to live.”

Mr. Speaker, I want to take this opportunity to commend Harry Thompson for publishing his memoirs. He says that he hopes that other Veterans and POWs will share their stories and “that together we can record what it is for America to be at war, what it is to serve in the armed Forces of the United States of America and, after service during wartime, what it means to salute the flag as well as why we, as Veterans, sometimes have a tear or two when we see a patriotic ceremony or parade.”

Harry Thompson has served our Nation in two important ways—by his service and sacrifice during World War II, and by the publication of his book that will be part of the history of America for all to read. I am honored to pay tribute today in the House of Representatives to this great American and Veteran of World War II and to thank him for his service to our Nation.

TO RECOGNIZE THE DEDICATION OF FORT FILLMORE, NEW MEXICO IN HONOR OF FIRST LIEUTENANT JOHN SALOPEK

HON. STEVAN PEARCE
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. PEARCE. Mr. Speaker, I rise today to recognize the dedication of Fort Fillmore, New Mexico in honor of First Lieutenant John Salopek, as celebrated in the biography by Gerald Carson, “Big John”, or 1Lt John Salopek, to whom Fort Fillmore is being dedicated today, was born on September 17, 1921 in Croatia. At age eight, he arrived in the United States, settling in Las Cruces, New Mexico.

Salopek received a Reserve Officer’s Training Corps (ROTC) commission in June 1944. He was assigned to a platoon leader position in 1st Platoon, Company G of the infamous 42nd “Rainbow” Division, 7th U.S. Army. Salopek’s unit arrived in Marseille, France in December, 1944. The unit fought in the Ardennes-Alsace Campaign near Gamshein, France. On January 5, 1944, Salopek’s platoon was attacked by German panzers, and most were taken prisoner of war (POW) the next day. Salopek was taken to a headquarters command post of the elite Waffenschutzstaffel (SS). Later, Salopek was transferred to Hammelburg Offizierlager XIIIB (Oflag) POW camp of 1,500 officers, to include the son of Soviet Premier Joseph Stalin and the son-in-law of General Patton. On March 26, 1945, General Patton ordered Task Force Baum to Hammelburg to rescue the paws. Only 300 of the 1,500 were rescued, to include 1Lt Salopek. Two days later, Task Force Baum was captured by Germans. Most were either killed or again taken POW. Salopek evaded capture and fled to a German farm house near Richenbuche, where he remained until American troops liberated the Hammelburg POW camp on April 5, 1945. The following year, 1LT Salopek, returned to his family’s farm in Mesilla, New Mexico.

Salopek’s father left over 300 acres of pecan farms to John in the Las Cruces area. Salopek spent the remainder of his life working his land.

1LT Salopek was awarded the Silver Star, Bronze, and Purple Heart for action in the Ardennes-Alsace Campaign. He died on April 15, 2002.”

TRIBUTE TO LATE JIM DUFF

HON. JOE BACA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 15, 2005

Mr. BACA. Mr. Speaker, it is with regret and deep sadness that I rise to honor James “Jim” Duff, a constituent from Rialto, California who passed away on December 11, 2005. I cannot begin to express how saddened I am by the passing of my friend Jim. All men die, but not all men really live; we can honestly say that Jim lived to the fullest. He was a model citizen, veteran, community leader, father, grandfather, and an extraordinary man.

Jim Duff was born and raised in Bonham, Texas but lived in Rialto, California for many years until his passing. Jim was a remarkable example of courage and sacrifice. He joined the Air Force and fought in World War II and Vietnam. Jim was a dedicated soldier who risked his life in the line of duty. For instance he was part of Project Ivy, the famous first test of a hydrogen bomb at the Eniwetok atoll. Nevertheless, one of his proudest accomplishments was Operation Fiddles, an effort to deliver food to innocent victims of war.

After 25 years of service in the military, Jim retired in 1970 to enjoy retirement with his lovely wife of 55 years, Mrs. Doris Duff. Jim and Doris met in Bonham, Texas where they grew up and went to school together. Aside from Doris, his sister Mary Fae Kamm, his son Bobby Douglas Duff, and two grandchildren, Sequoia and Madrone, survive Jim. His dedication and courage live in his family; his son is a successful business owner in Duncanville, Texas and his deceased daughter Carol D- Lynn lost her life while rescuing her children from a dangerous rip tide.

Since retiring from the Air Force, Jim had become a fixture of the community. He was Commander of Post 8737 of the Veterans of Foreign Wars for fourteen years and held office within the organization at the statewide and national level, even serving as National VFW Post American Commander. In the Veterans of Foreign Wars, he dedicated himself to help fellow veterans by volunteering twice a week without fail at Loma Linda Veterans Hospital. Jim helped veterans fill out paperwork, file claims, and fight for the health care rights they deserve. I knew him well as a member of my Veterans Advisory Board.

Mr. Speaker, I therefore wish to offer the condolences of a grateful Nation to the family of Mr. James Duff, an irreplaceable man who will not be forgotten.
Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S13599–S13687

Measures Introduced: Fourteen bills and three resolutions were introduced, as follows: S. 2105–2118, S. Res. 334, and S. Con. Res. 70–71. Pages S13659–60

Measures Reported:


S. 1312, to amend a provision relating to employees of the United States assigned to, or employed by, an Indian tribe. (S. Rept. No. 109–208)


Measures Passed:

Honoring Former Senator William Proxmire: Senate agreed to S. Res. 334, relative to the death of William Proxmire, former U.S. Senator from the state of Wisconsin. Pages S13683–84

Real Property Jurisdiction Transfer: Senate passed S. 2116, to transfer jurisdiction of certain real property to the Supreme Court. Page S13684

Coral Reef Conservation Amendments Act: Senate passed S. 1390, to reauthorize the Coral Reef Conservation Act of 2002, after agreeing to the committee amendments, and the following amendments proposed thereto: Pages S13684–86

McConnell (for Stevens) Amendment No. 2677, to make it clear that damage from derelict fishing gear and vessel anchors and anchor chains warrants emergency response action.

McConnell (for Stevens) Amendment No. 2678, to strike references to certain laws.

State Department Authorities: Senate passed H.R. 4436, to provide certain authorities for the Department of State, clearing the measure for the President.

Philippines Immigration Centennial: Senate agreed to H. Con. Res. 218, recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century, after agreeing to the following amendment:

McConnell (for Akaka) Amendment No. 2679, of a technical nature.

Predisaster Mitigation Program Reauthorization Act: Committee on Homeland Security and Governmental Affairs was discharged from further consideration of H.R. 4324, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, clearing the measure for the President.


U.S. Patriot Act Reauthorization—Conference Report: Senate continued consideration of the conference report to accompany H.R. 3199, to extend and modify authorities needed to combat terrorism.

A unanimous-consent-time agreement was reached providing for further consideration of the conference report at approximately 10 a.m., on Friday, December 16, 2005, that there be 60 minutes for debate, to be followed by a vote on the motion to invoke cloture thereon at approximately 11 a.m.

Deficit Reduction Act—Motions to Instruct Conferees: Senate continued consideration of the message from the House of Representatives to accompany S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95), taking action on the following motions to instruct conferees proposed thereto:
Adopted:
By 71 yeas to 20 nays (Vote No. 354), Senate agreed to DeWine Motion to Instruct Conferees to insist that any conference report shall not include the provisions contained in section 8701 of the House amendment relating to the repeal of section 754 of the Tariff Act of 1930. 

By 75 yeas to 16 nays (Vote No. 355), Senate agreed to Kohl Motion to Instruct Conferees to insist that any conference report shall not include any of the provisions in the House amendment that reduce funding for the child support program established under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.), and to insist that the conference report shall not include any restrictions on the ability of States to use Federal child support incentive payments for child support program expenditures that are eligible for Federal matching payments.

By 83 yeas to 8 nays (Vote No. 356), Senate agreed to Kennedy Motion to Instruct Conferees to insist that the Senate provisions increasing need-based financial aid in the bill S. 1932, which were fully offset by savings in the bill S. 1932, be included in the final conference report and that the House provisions in the bill H.R. 4241 that impose new fees and costs on students in school and in repayment be rejected in the final conference report.

By 63 yeas to 28 nays (Vote No. 357), Senate agreed to Reed Motion to Instruct Conferees to insist on a provision that makes available $2,920,000,000 for the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), in addition to the $2,183,000,000 made available for such Act in the Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Act, 2006.

The Chair was authorized to appoint the following conferees on the part of the Senate: Senators Gregg, Domenici, Grassley, Enzi, Allard, Sessions, Stevens, Shelby, Specter, Chambliss, McConnell, Conrad, Murray, Harkin, Sarbanes, Inouye, Bingaman, Baucus, Kennedy, and Leahy.

Senator Corzine Tributes—Agreement: A unanimous-consent agreement was reached providing that Senators be permitted to submit tributes to Senator Corzine for the Congressional Record until December 29, 2005, and that the tributes be printed as a Senate document.

Messages From the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a report relative to the export of accelerometers to the People's Republic of China's Ministry of Railways; which was referred to the Committee on Foreign Relations. (PM–33)

Nominations Received: Senate received the following nominations:

Stephen G. Larson, of California, to be United States District Judge for the Central District of California.

Terrance P. Flynn, of New York, to be United States Attorney for the Western District of New York for the term of four years.

Messages From the House:

Measures Read First Time:

Enrolled Bills Presented:

Executive Communications:

Executive Reports of Committees:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Amendments Submitted:

Authorities for Committees to Meet:

Privileges of the Floor:

Record Votes: Four record votes were taken today. (Total—357)

Adjournment: Senate convened at 9 a.m., and as a further mark of respect to the memory of the late Senator William J. Proxmire, former United States Senator for the State of Wisconsin, in accordance with S. Res. 334, adjourned at 7:54 p.m., until 9:30 a.m., on Friday, December 16, 2005. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S13687.)

Committee Meetings

(Committees not listed did not meet)

BUSINESS MEETING

Committee on Commerce, Science, and Transportation: Committee ordered favorably reported the following business items:

S. 2012, to authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, with an amendment in the nature of a substitute;

S. 1608, to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception; and
The nomination of one officer in the Coast Guard.

NEW ORLEANS LEVEES

Committee on Homeland Security and Governmental Affairs: Committee held a hearing to examine New Orleans (Louisiana) levees relating to Hurricane Katrina, focusing on storm damage reduction projects in metropolitan New Orleans, federal, state, and local responsibility for operation, maintenance, and inspection of the levees, the role of the Army Corps of Engineers in response to a hurricane, and support of the Federal Emergency Management Agency, receiving testimony from Colonel Richard P. Wagenaar, Commander and District Engineer, Alfred C. Naomi, Senior Project Manager, and Gerard A. Colletti, Operations Manager for Completed Works, all of the New Orleans District, U.S. Army Corps of Engineers; Edmond J. Preau, Jr., Louisiana Department of Transportation and Development, Baton Rouge; and James P. Huey and Max L. Hearn, both of New Orleans, Louisiana, on behalf of the Orleans Levee District.

Hearing recessed subject to the call.

BUSINESS MEETING

Committee on Homeland Security and Governmental Affairs: Committee ordered favorably reported the following business items:

S. 1445, to designate the facility of the United States Postal Service located at 520 Colorado Avenue in Arriba, Colorado, as the “William H. Emery Post Office”;  
S. 1792, to designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the “Grant W. Green Post Office Building”;  
H.R. 3770, to designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the “Grant W. Green Post Office Building”;  
S. 1820, to designate the facility of the United States Postal Service located at 6110 East 51st Place in Tulsa, Oklahoma as the “Dewey F. Bartlett Post Office”;  
S. 2036, to designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the “Raymond J. Salmon Post Office”;  
S. 2064, to designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the “Malcolm Melville ‘Mac’ Lawrence Post Office”;  
S. 2089, to designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the “Hiram L. Fong Post Office Building”;  
H.R. 2113, to designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the “John F. Whiteside Joliet Post Office Building”;  
H.R. 2346, to designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the “John J. Hainkel, Jr. Post Office Building”;  
H.R. 2413, to designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the “Lillian McKay Post Office Building”;  
H.R. 2630, to designate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the “J.M. Dietrich Northeast Annex”;  
H.R. 2894, to designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the “Abraham Lincoln Birthplace Post Office Building”;  
H.R. 3256, to designate the facility of the United States Postal Service located at 5038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the “Congressman James Grove Fulton Memorial Post Office Building”;  
H.R. 3368, to designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the “Gagetown Veterans Memorial Post Office”;  
H.R. 3439, to designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the “Ava Gardner Post Office”;  
H.R. 3548, to designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the “Heinz Ahlmeyer, Jr. Post Office Building”;  
H.R. 3703, to designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the “Staff Sergeant Michael Schafer Post Office”;  
H.R. 3825, to designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, the “Clayton J. Smith Memorial Post Office”;  
H.R. 3830, to designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida as the “United States Cleveland Post Office Building”;  
H.R. 4053, to designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California as the “Lillian Kinkella Keil Post Office”;
H.R. 3989, a bill to designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the “Albert H. Quie Post Office”; and

The nominations of George W. Foresman to be Under Secretary of Homeland Security for Preparedness, and Mary M. Rose to be a Member, Merit Systems Protection Board.

BUSINESS MEETING

Select Committee on Intelligence: Committee met in closed session to consider pending intelligence matters.

Committee recessed subject to the call.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: Will be in the next issue of the Record. (See next issue.)

Additional Cosponsors: (See next issue.)

Reports Filed: There were no reports filed today.


Rejected the Miller motion to recommit the bill to the Committee on Education and the Workforce and the Committee on Ways and Means with instructions to report the same back to the House forthwith with an amendment, by a yea-and-nay vote of 200 ayes to 227 noes, Roll No. 634.

Pursuant to the rule, in lieu of the amendments reported by the Committees on Education and the Workforce and Ways and Means now printed in the bill, the amendment in the nature of a substitute printed in part A of H. Rept. 109–346 shall be considered as adopted.

H. Res. 602, the rule providing for consideration of the bill was agreed to by a yea-and-nay vote of 226 ayes to 199 nays, Roll No. 633, after agreeing to the previous question.

Suspensions: The House agreed to suspend the rules and pass the following measure which was debated on Wednesday, December 14th: The House agreed to suspend the rules and pass the following measures:

Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected, by a yea-and-nay vote of 401 ayes to 22 nays with 5 voting “present”, Roll No. 637;

Pages H11799–H11800

Agreed to amend the title so as to read “Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected for those who celebrate Christmas.”.

Page H11800

Urging the President to issue a proclamation for the observance of an American Jewish History Month: H. Con. Res. 315, to urge the President to issue a proclamation for the observance of an American Jewish History Month, by a yea-and-nay vote of 423 ayes with none voting “nay”, Roll No. 638; and

Pages H111800

Urging the Government of the Russian Federation to withdraw or modify proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic and foreign nongovernmental organizations in the Russian Federation: H. Con. Res. 312, amended, to urge the Government of the Russian Federation to withdraw or modify proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic and foreign nongovernmental organizations in the Russian Federation, by a yea-and-nay vote of 405 ayes to 15 nays, Roll No. 641.

Pages H11858–59

Agreed to amend the title so as to read “Urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions.”.

Page H111859

began consideration on H.R. 4437, to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security. Further consideration will continue at a later date.

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in part A of H. Rept. 109–347, shall be considered as adopted in the House and in the Committee of the Whole and shall be considered as read.

Agreed to:

Carter amendment (No. 1 printed in H. Rept. 109–347) that requires the Secretary of Homeland Security to include satellite communications in the plan authorized by Section 106 of H.R. 4473;

Pages H11820–37

Gohmert amendment (No. 2 printed in H. Rept. 109–347) which directs the Inspector General to refer any instances of misconduct or wrongdoing on a contract to the Secretary of the Department of Homeland Security or other appropriate official for the purpose of evaluating whether or not suspension or debarment of the contractor is warranted;

Pages H11838–39

Johnson, Sam, of Texas amendment (No. 3 printed in H. Rept. 109–347) which states that all uniforms procured for use by Border Patrol agents are to be made in the United States;

Pages H11839–42

Renzi amendment (No. 4 printed in H. Rept. 109–347) which states that all uniforms procured for use by Border Patrol agents are to be made in the United States;

Pages H11842–43

Castle amendment (No. 5 printed in H. Rept. 109–347) that requires DHS to submit a timeline for: (1) equipping all land borders with the USVISIT entry/exit system; (2) developing and deploying the exit component of the USVISIT system at all land borders; and (3) making all border screening systems operated by the Department interoperable;

Pages H11843–45

Campbell amendment (No. 7 printed in H. Rept. 109–347) that amends Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by replacing “Immigration and Naturalization Service” with “Department of Homeland Security” and enforces Section 642 by stating that the Attorney General shall not provide any grant amount to any Federal, State, or local government agency or entity that violates the Act (which states that any government official or entity may not be prohibited from sending information to DHS regarding the citizenship or immigration status of any individual);

Pages H11846–47

Castle amendment (No. 9 printed in H. Rept. 109–347) which requires the Department of Homeland Security to report to Congress on: (1) the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry; (2) the number of such aliens that have been deported; and (3) the number of such aliens from countries identified as sponsors of terrorism. Also encourages the Department to develop a strategy for entering the appropriate background information of illegal aliens from countries sponsoring terrorism into appropriate security screening watch lists;

Pages H11850–51

Brown-Waite, Ginny of Florida amendment (No. 10 printed in H. Rept. 109–347) that inserts a new section declaring that Congress condemns rapes by smugglers along the international land border of the U.S. and urges in the strongest possible terms the government of Mexico to work in coordination with the U.S. Customs and Border Protection of the Department of Homeland Security to take immediate action to prevent such rapes from occurring;

Pages H11851–52

DeFazio amendment (No. 12 printed in H. Rept. 109–347) that directs Customs and Border Protection (CPB) to conduct a pilot program to evaluate the use of automated systems for immediate prescreening of individual airline passengers bound for the U.S. before they board a plane. Pilot would use at least one airline in two foreign airports and evaluate up to three automated systems. CBP would be required to report to Congress no later than 30 days after completion of the pilot and provide a plan to fully deploy the most preferable prescreening system no later than January 1, 2007; and

Pages H11856–57

Hunter amendment (No. 11 printed in H. Rept. 109–347) that mandates the construction of specific security fencing, including lights and cameras, along the Southwest border for the purposes of gaining operational control of the border. Fencing has been designated in sectors that have the highest number of immigrant deaths, instances of drug smuggling and illegal border crossings. The amendment includes a requirement for the Secretary of Homeland Security to conduct a study on the use of physical barriers along the Northern border (by a recorded vote of 260 ayes to 159 noes, Roll No. 640).

Pages H11852–56, H11857–58

Rejected:

Jackson-Lee of Texas amendment (No. 8 printed in H. Rept. 109–347) that sought to provide guidelines for implementing the secured alternatives to
detention provision in section 402(a) (by a recorded vote of 162 ayes to 252 noes, Roll No. 639).

Withdrawn:

Gingrey amendment (No. 6 printed in H. Rept. 109–347) that was offered and subsequently withdrawn, which sought to suspend the Visa Waiver Program until the automated entry-exit program is operational and until ports of entry have functional biometric machine readers. Pages H11848–50, H11857

H. Res. 610, the rule providing for consideration of the bill, was agreed to, by a yea-and-nay vote of 220 yea to 206 nay, Roll No. 636, after agreeing to order the previous question. Pages H11670–78, H11798–99

National Defense Authorization Act for Fiscal Year 2006—Motion to go to Conference: The House disagreed to the Senate amendment to H.R. 1815, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and agreed to a conference. Pages H11859–67

The House debated the Skelton motion to instruct conferees, the Chair announced that further consideration will be postponed. Pages H11859–67


Senate Message: Message received from the Senate today appears on pages H11845, H11867–68.

Senate Referrals: S. 1390 was referred to the Committee on Resources and S. 2116 was held at the desk. (See next issue.)

Quorum Calls—Votes: Six yea-and-nay votes and three recorded votes developed during the proceedings of today and appear on pages H11678, H11797, H11798, H11798–99, H11799, H11800, H11857, H11858, and H11858–59. There were no quorum calls.

Adjournment: The House met at 10 a.m. and at 12:04 a.m. stands in recess subject to call of the Chair.

Committee Meetings

MISCELLANEOUS MEASURES


OVERSIGHT—DRUG DISCOUNT PROGRAM

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled “Oversight and Administration of the 340B Drug Discount Program: Improving Efficiency and Transparency.” Testimony was heard from the following officials of the Department of Health and Human Services: Stuart Wright, Deputy Inspector General, Evaluation and Inspections; and Dennis Williams, Deputy Administrator, Health Resources and Services Administration; and public witnesses.

LOUISIANA RECOVERY CORPORATION ACT

Committee on Financial Services: Ordered reported, as amended, H.R. 4100, Louisiana Recovery Corporation Act.

INVESTIGATIVE REPORTS; COMMITTEE BUSINESS

Committee on Government Reform: Approved the following Investigative Reports “Bringing Communities into the 21st Century: A Report on Improving the Community Development Block Grant Program;” and “The Methamphetamine Epidemic: International Roots of the Problem, and Recommended Solutions.”

The Committee also approved other pending Committee business.

RESOLUTION—IRAQ WAR DOCUMENT REQUEST

Committee on International Relations: Ordered reported, as amended, without recommendation H. Res. 549, Requesting the President of the United States provide to the House of Representatives all documents in his possession relating to his October 7, 2002, speech in Cincinnati, Ohio, and his January 28, 2003, State of the Union address.

OVERSIGHT—HURRICANES KATRINA AND RITA EFFECTS ON GULF FISHING

Committee on Resources: Subcommittee on Fisheries and Oceans held an oversight hearing on the Effects of Hurricanes Katrina and Rita on Fishing Resources, the Fishing Industry and Fishing Communities in the Gulf of Mexico. Testimony was heard from William T. Hogarth, Director, National Marine Fisheries
Service, NOAA, Department of Commerce; and public witnesses.

**EXPRESSING THE COMMITMENT OF THE HOUSE OF REPRESENTATIVES TO ACHIEVING VICTORY IN IRAQ**

Committee on Rules: Testimony was heard from Representatives Ros-Lehtinen and Lantos, but action was deferred on H. Res. 612, Expressing the Commitment of the House of Representatives to Achieving Victory in Iraq.

**OVERSIGHT—VETERANS AFFAIRS FLU VACCINATION/PANDEMIC PREPARATION**

Committee on Veterans’ Affairs: Subcommittee Oversight and Investigations held an oversight hearing on the Department of Veterans Affairs’ flu vaccination program, and preparations for a possible Avian Flu Pandemic. Testimony was heard from the following officials of the Department of Veterans Affairs: Lawrence Deyton, M.D., Chief Consultant, Public Health Strategic Health Care Group; and Robert Muder, M.D., Staff Physician, Veterans Affairs Pittsburgh Health Care System; and Denise Cardo, M.D., Director, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, Department of Health and Human Services.

**BRIEFING—GLOBAL UPDATES/HOTSPOTS**

Permanent Select Committee on Intelligence: Met in executive session to receive a briefing on Global Updates/Hotspots. The Committee was briefed by departmental witnesses.

**RADICAL ISLAM IN THE UNITED STATES**

Permanent Select Committee on Intelligence: Subcommittee on Intelligence Policy met in executive session to hold a hearing entitled “Radical Islam in the United States.” Testimony was heard from departmental witnesses.

**Joint Meetings**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT**

Conferes agreed to file a conference report on the differences between the Senate and House passed versions of H.R. 1281, to authorize appropriations for the National Aeronautics and Space Administration for science, aeronautics, exploration, exploration capabilities, and the Inspector General, and for other purposes, for fiscal years 2006, 2007, 2008, 2009, and 2010.

**COMMITTEE MEETINGS FOR FRIDAY, DECEMBER 16, 2005**

(Committee meetings are open unless otherwise indicated)

**Senate**

Committee on Armed Services: to receive a closed briefing regarding future naval force structure requirements, 10:30 a.m., SR–222.

**House**

Committee on Homeland Security. Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity, executive, briefing on announced changes to the prohibited items list that would allow airline passengers to board an aircraft with scissors, pliers and wrenches, 11:30 a.m., 202 John Adams.

Extensions of Remarks, as inserted in this issue

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Hinojosa, Maurice D., N.Y., E2554
Honda, Michael M., Calif., E2553
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Marchant, Kenny, Tex., E2545
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Meeks, Kendrick B., Fla., E2555
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Mongrave, Marilyn N., Colo., E2552, E2554, E2555
Morse, Elizabeth H., N.Y., E2551
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Ackerman, Gary L., N.Y., E2554
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Bonner, Jo Aila., E2541, E2542, E2544, E2545, E2546
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Davis, Jim, Fla., E2548
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Hart, Melissa A., Pa., E2549
Hensarling, Jeb, Tex., E2554
Higgins, Brian, N.Y., E2541, E2544, E2542, E2543, E2544

Senate Chamber

Program for Friday: After the transaction of any morning business (not to extend beyond 30 minutes), Senate will continue consideration of the conference report to accompany H.R. 3199, US PATRIOT Reauthorization Act, with a vote to occur on the motion to invoke cloture thereon. Also, Senate will consider any other cleared legislative and executive business.

House Chamber

Program for Friday: Continue consideration of H.R. 4437—Border Prorection, Antiterrorism, and Illegal Immigration Control Act of 2005 (Subject to a Rule, Complete Consideration).

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December 15, 2005

Next Meeting of the SENATE

9:30 a.m., Friday, December 16

Next Meeting of the HOUSE OF REPRESENTATIVES

9 a.m., Friday, December 16