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No. 84

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BLUNT).

DESIGNATION OF THE SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
June 24, 1998.

I hereby designate the Honorable ROY BLUNT to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

PRAYER

Rev. David S. Clift, Duck United Methodist Church, Duck, North Carolina, offered the following prayer:

Dear God, our Creator, we acknowledge Your reign over the universe and the affairs of men. You ordained that governments should lead and guide Your people.

Grant these servants wisdom as they take up the mantle of stewardship of a nation and a world.

Grant them inspiration as they endeavor to find answers, solve problems, and dream dreams.

Grant them courage so when they are right, they will be able to stand firm in spite of criticism, persecution, or resistance.

Grant them humility so that when they are wrong, they will be able to change in spite of embarrassment and pride.

Grant them understanding so that they will know when to be courageous and when to be humble.

We express our gratitude for the privilege of living in a free and wonderful land. May we rise up with sacrificial enthusiasm to fulfill the glorious task of keeping alive the hope we call America. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from Michigan (Ms. STABENOW) come forward and lead the House in the Pledge of Allegiance.

Ms. STABENOW led the Pledge of Allegiance as follows:

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

MESSAGE FROM THE SENATE

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

H.R. 4060. An act making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4060) "An Act making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. DOMENICI, Mr. COCHRAN, Mr. GORTON, Mr. MCCONNELL, Mr. BENNETT, Mr. BURNS, Mr. CRAIG, Mr. STEVENS, Mr. REID, Mr. BYRD, Mr. HOLLINGS, Mrs. MURRAY, Mr. KOHL, Mr. DORGAN, and Mr. INOUE, to be the conferees on the part of the Senate.

WELCOMING REV. DAVID CLIFT OF DUCK, NORTH CAROLINA

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

Mr. JONES. Mr. Speaker, on behalf of my colleagues, I want to thank Rev. David Clift for his opening prayer.

Reverend Clift is pastor of the Duck United Methodist Church located on the beautiful Outer Banks of North Carolina, which is in the Third Congressional District. Since coming to the Outer Banks in 1994, the Reverend has served one of the fastest growing congregations in the State.

Reverend Clift is married to Libby Aull and they have two children, Mark, who is a college student, and Elizabeth, who is in high school.

I personally know several of Reverend Clift's church members who tell me he is a dynamic preacher and is greatly appreciated by his congregation. He is often invited to speak throughout the United Methodist Conference.

Again, I would like to thank Reverend Clift for joining us today and for the work he does every day by serving our Lord and his fellow man.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain 10 1-minutes on each side of the aisle.

CONGRATULATIONS TO HEATHER WILSON UPON HER ELECTION TO CONGRESS

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

Mr. SHIMKUS. Mr. Speaker, it is hard for this West Pointer to say, "Go

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

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



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Air Force," but today I must. Yesterday, the voters of New Mexico's First District chose Heather Wilson, an Air Force Academy grad, to replace our friend and departed colleague, Steve Schiff.

I welcome Heather to the Congress, adding to the ranks of distinguished women who currently serve in this body, more than any other time in our Nation's history.

More importantly, I welcome her as a fellow veteran of the armed services. As fewer and fewer veterans elect to serve in Congress, it is important that we have people like Heather Wilson who, even though she served in the Air Force, still understands the need for a strong national defense.

Mr. Speaker, I expect Heather will be a strong and forceful voice for our men and women in uniform, as well as for the common sense family values that are the true strength of this Nation.

Heather Wilson is a worthy and welcome successor to our friend, Steve Schiff.

CONGRESS MUST PASS HMO REFORM

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

Mr. GEJDENSON. Mr. Speaker, one has to wonder what motivates Speaker GINGRICH to continually stop movement on HMO reform.

Today in the paper again a 52-year-old father of five suffers and waits to get a liver transplant, and it is not approved until he is too ill and too sick to get that transplant. My only brother's girlfriend died at 38 years of age as the HMO, the managed care system, delayed. Delayed testing, delayed X-rays, until it was too late.

In Florida, the legislature took a step today. They started to provide patients some rights. This Congress has to get past the Speaker and the Republican leadership and fight for the life and breath of the American people to pass HMO reform.

CRIME IN OUR PUBLIC SCHOOLS

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

Mr. GIBBONS. Mr. Speaker, American schools are under a siege of violence. Recent events have again focused this Nation's attention on violence in American schools.

Despite the long-standing lip service to the problem, media reports have recently highlighted that schools are not safe places of learning.

Mr. Speaker, let me share with this body some alarming statistics. Physical attacks or fights without the use of weapons lead the list of reported crimes in our schools, with about 190,000 such events occurring in any given year.

Moreover, 116,000 incidents of theft or larceny were reported, along with 98,000 incidents of vandalism.

Most alarming, Mr. Speaker, is that serious crimes included 4,000 rapes or sexual assaults, 7,000 robberies, and 11,000 physical attacks or fights with dangerous weapons, knives and guns.

These events are taking place in every congressional district in the country.

Mr. Speaker, the time to act is now. For the safety of our children, it is imperative that this Congress focus its attention on this critical issue.

PATIENT BILL OF RIGHTS

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

Ms. STABENOW. Mr. Speaker, I would first rise today to commend President Clinton for this week announcing new patient protections for those who are covered by Medicare. The time is now for all of us in the House to join together to extend those same protections to every single person who is covered by health care in this country.

The gentleman from Michigan (Mr. DINGELL) AND THE GENTLEMAN FROM IOWA (MR. GANSKE) have come together in an important effort that should not be watered down by other proposals that do not make the test, that do not really protect patients.

Mr. Speaker, we need to make sure that our constituents, as well as ourselves, have access to specialists, that we can have emergency room costs covered when it is necessary, that we have the opportunity to fully discuss with our physicians the kinds of treatments that we need if we are in managed care.

Time is overdue for us to provide the kinds of patient protections necessary in managed care to make sure that our constituents have the quality care that they deserve.

Mr. Speaker, I call upon the House to support the Patient Bill of Rights and to take it up immediately.

DOLLARS TO THE CLASSROOM ACT

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

Mr. PITTS. Mr. Speaker, President Clinton has been calling on Congress to start yet another Federal education program to hire 100,000 new teachers. If the President wants to hire teachers, then he should be ready to support H.R. 3248, the Dollars to the Classroom Act.

The Dollars to the Classroom Act sends 95 percent of the money for 31 Federal education programs directly to local schools. With the flexibility given in the Dollars to the Classroom Act, principals will be able to hire more teachers for America's schools, which our kids deserve.

Our Nation's parents deserve for their education tax dollars to actually reach their child's classroom. Let us stop talking about hiring teachers. Let us actually make it possible by passing the Dollars to the Classroom Act. It is time we put children first in education by directing our tax dollars to the classroom.

CHINA GOBBLING UP AMERICAN NATIONAL SECURITY SECRETS

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

Mr. TRAFICANT. Mr. Speaker, on the very day that President Clinton leaves for China, China thumbs their nose at America once again. Check this out.

Top U.S. officials say, and I quote: China stole a top secret device off an American satellite. The theft was so serious, our National Security Agency was forced to change all of our communication codes.

After all of this, the White House still wants a permanent Most Favored Nation trade status for China.

Free trade my ascot, Mr. Speaker.

This is a free ride and a free for all for China, who is gobbling up our national security secrets faster than the President can down a Big Mac and a box of fries. Think about that.

Mr. Speaker, I want to yield back what secret codes, secrets, and national security we have left.

CUT TAXES ON CAPITAL INVESTMENT TO KEEP JOBS IN AMERICA

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

Mr. TIAHRT. Mr. Speaker, the Democrats say we need to keep jobs in America for American workers, Republicans say that we need to keep jobs in America for American workers. The difference is that liberal Democrat policies do everything possible to drive companies overseas or encourage investment capital to go abroad.

Think about it. Democrats rail against "corporate America." They support increasing expansion of regulation and they seek to raise taxes on the people who create and keep jobs. Naturally, businesses respond by moving from a high tax country to a low tax country.

Mr. Speaker, if we want to keep jobs in America, make America the best place in the whole world to open a business, the best place in the whole world to invest, the best place in the whole world to start a business, the best place in the whole world to make a profit, the best place in the whole world to keep profits, the best place in the whole world to build a company and make it grow. We must keep jobs in America.

Mr. Speaker, let us cut taxes on capital investment and make the decision to stay in America the easiest decision in the world.

INTRODUCTION OF THE GUAM CENTENNIAL RESOLUTION

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

Mr. UNDERWOOD. Mr. Speaker, just this past Sunday I was on Guam for the reenactment of America's first flag-raising ceremony on Guam. It was on June 21, 1898 that a contingent of American officials, led by Captain Henry Glass, raised the first American flag in the village of Piti.

For many Chamorros, the native people of Guam, it was a time of confusion and apprehension. No one knew how the new authorities would affect the island. And others, after nearly 300 years of Spanish dominion, were sorry to see the Spanish officials and soldiers be whisked away.

However, one thing is certain. The people of Guam deserve the recognition and commitment that the people of this body can provide in commemoration of Guam's centennial anniversary.

For this purpose, today I am introducing a House Resolution which calls on the House of Representatives to recognize Guam's service to the United States and to reaffirm its commitment to Guam's request for political status clarification. I have collaborated extensively with the Democratic and Republican leadership of the House Committee on Resources in formulating the language of this resolution.

Mr. Speaker, I am pleased to note that 40 of my colleagues have agreed to be original cosponsors of the Guam Centennial Resolution. Let us commemorate Guam's 100-year relationship with the United States.

REDUCING CAPITAL GAINS TAXES

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

Mr. KINGSTON. Mr. Speaker, today Speaker NEWT GINGRICH introduces one of the most important jobs bills that this Congress will consider during this term, and I am talking about the bill to reduce the capital gains tax from 20 percent to 15 percent.

When this has been done in the past, starting in 1978, revenues went up \$23 billion. When the capital gains taxes were cut again in 1981, revenues went up \$9 billion. And in 1986, when capital gains tax rates were raised and not lowered, revenue loss was about \$180 billion.

If we give Americans the opportunity to sell goods at a lower price, they are going to do it. And in doing so, they are going to create more jobs. This would be great for entrepreneurs, for small businesses, for seniors and over

one-half of American consumers who right now are savers.

This is a very important jobs bill, and it is a bill that I am looking forward to a good debate on. I think that this Congress would be remiss in its duties if we did not act on it before the end of the session.

AMERICANS NEED A PATIENT'S BILL OF RIGHTS NOW

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

Mr. GREEN. Mr. Speaker, in today's Washington Post there is a front page article that illustrates the immediate need for our Patient's Bill of Rights.

In February of 1997, doctors told a 52-year-old local resident, father of five, that a liver transplant was his only chance to beat liver cancer. The executives of the HMO disagreed and denied coverage for this lifesaving treatment.

Over the next five months this local resident wrote three letters to his HMO, and each was ignored. Finally, five months after his doctors originally told him he needed a transplant, he won an external appeal. The HMO was ordered to pay for the transplant. Five days after he won that appeal, he was too sick to receive that transplant and he died.

Mr. Speaker, how many people have died because of delay in medical care because of this law we have now? If we had a Patient's Bill of Rights that included timely internal and external appeals; access to specialists; point of service options; open communications between patients and providers; and, accountability for these medical decisions, these Americans would not be dying because they are being denied medical care.

Mr. Speaker, we need a Patient's Bill of Rights now.

□ 1015

ON EDUCATION

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

Mr. GUTKNECHT. Mr. Speaker, a wise man once defined insanity as doing more of what you have been doing and expecting a different result.

Our friends on the left are talking about giving more money to schools which have produced terrible results, confident in the belief that schools which have failed so miserably the last time Congress gave them more money will do a better job this time around. Republicans talk about improving school performance, for we believe that the focus should be on results, not just on inputs. Democrats talk about spending more money from the Federal Government, unconcerned that Washington bureaucrats will then have more control over our children's education.

Republicans want exactly the opposite. We want parents and local authorities to have more power, and we want less meddling from Washington bureaucrats.

Two different visions and, I submit, two fundamentally different approaches to the education of our children.

AMERICA'S HEALTH CARE SYSTEM

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, have my colleagues heard the response, no room at the inn? That is what we are getting with the health system in America. HMOs, no room at the inn, no room in the emergency room, no hospital bed, no ability to get surgery, no ability to stay in the hospital because one needs to.

Republicans are about to unveil their own do-nothing legislative proposals to address the crisis of teen smoking and managed care reform, but these proposals are not solutions. They are a fig leaf to hide their do-nothing proposals. Instead of supporting real life problems, these programs really apply and listen to the special interests.

That is why I am listening to those who cannot get into hospital beds, who are turned away from emergency rooms, whose children are not diagnosed because we have to call up the HMO to get approval.

We are also going to listen to children today. Three thousand of them start smoking every day, and 1,000 of them will die from smoking. We will have a hearing today to listen to the teenagers of America tell us why we need to pass a bill, a tobacco bill to reform this system, to improve the health system, and to make sure that we do stand on the correct side of legislative history; that is, supporting those who need good health care and to stop tobacco from attacking our children.

ON SOCIAL SECURITY

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

Mr. SMITH of Michigan. Mr. Speaker, the gentleman from Minnesota (Mr. MINGE) and I, and the gentleman from Wisconsin (Mr. NEUMANN) are introducing legislation, H.R. 4033, that makes changes in the way government borrows from the Social Security trust fund.

It does two things. It provides that from now on when we calculate whether there is a budget surplus or deficit, OMB and CBO, the administration and Congress, shall not consider the money we borrow from the Social Security trust fund as revenue in determining whether or not there is a deficit or surplus.

The other provision in that bill says that from now on when we borrow any

money from the Social Security trust fund, it is going to be in the form of marketable Treasury bills rather than the blank IOUs that we have been using in the past.

If the current revenue spending stream continues, it would mean, for the first time in many years, we could have a balanced budget without considering the \$90 billion borrowed from Social Security. It is the right track, and we need to keep on that track by passing H.R. 4033. Let us be very honest and clear, borrowing from the Social Security should not be considered revenue and the amount borrowed should be secured by marketable Treasury bills rather than the existing politically dependent nonmarketable IOUs.

STANDING UP FOR NEIGHBORHOODS

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

Mr. KUCINICH. Mr. Speaker, our Nation exists not simply as a collection of 50 States. The fabric of America is woven through tens of thousands of neighborhoods, the place where we were born, where we grew up, where we live, where we hope to spend the rest of our days.

Those neighborhoods contain familiar landmarks, houses, small businesses, a drugstore here, a restaurant there, places where we gather, where we socialize, where we meet our friends.

Recently the Rite Aid Corporation has been acquiring key corner properties in the Cleveland area and knocking out homes, small businesses, offices and landmarks so that they might become the most profitable drugstore chain. Rite Aid clearly does not care about neighborhood history, about the quality of communities.

One site they acquired, a neighborhood crossroads, was left vacant, weed-strewn and vandalized and littered with debris for a year and a half.

America must stand up for its neighborhoods. Do not patronize businesses which do not respect a neighborhood's history.

ON MANAGED CARE, TEEN SMOKING, AND TAXES

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

Mr. EWING. Mr. Speaker, we have heard some pretty stiff language in this House this morning concerning managed care, teenage smoking, taxes.

Let us look at the real facts. Managed care can be improved and the Republican Party has a plan to do that. But it is not socialized medicine, that is what the other side wants.

Teenage smoking, we have a plan to address teenage smoking. We all agree on that. Yet the other side has a plan

also, a \$500 billion, \$600 billion plan that grows government and is again a very socialistic approach to teenage smoking.

Capital gains, we have proven that capital gains increases the revenue to this government. The other side would raise taxes, not lower taxes. The real difference is how to accomplish what is needed for America.

The other side believes it is big government, more spending. We believe we have to use our money more wisely, reform government where necessary, and encourage personal responsibility. Those are the answers.

HEALTH CARE

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

Ms. DELAURO. Mr. Speaker, a few weeks ago I received a letter from a woman in Iowa. She was kicked out of the hospital less than 24 hours after undergoing breast cancer surgery, only to go home in pain and to develop painful infections.

She remarked in her letter how her family dog broke his leg and they took him to the vet. The veterinarian kept the dog for four days. She writes, and I quote, "A dog receives better health care than a woman." She is right, and it is a disgrace.

My bill to provide breast cancer patients with 48 hours in the hospital has been included in the Democratic Patients' Bill of Rights. But the Republican leadership refuses to bring this bill to the floor of the House for a vote.

The GOP seems to be more concerned with protecting the profits of the health insurance industry than protecting the quality of health care for American families. Our pets should not be getting better health care than our families.

It is time to pass the Patients' Bill of Rights.

CONGRATULATIONS CHICAGO BULLS

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

Mr. COOK. Mr. Speaker, if I could have the gentleman from Illinois (Mr. DAVIS) come up and join me, a year ago I came to the House floor to pay off a bet with the gentleman from Illinois (Mr. JACKSON). I bet him that the Utah Jazz would beat the Bulls. I lost. My payment was a floor speech honoring the Chicago Bulls.

Last night, in preparation for this speech, I dug out that speech I gave last year and I remembered a vaunting conclusion. I was right. My closing words were, "We will see you next year, Mr. Jackson. But next year the results will be different."

Well, it is next year and I am back again, a broken man. I have learned a

very important lesson about the evils of betting. And during the playoffs, we all learned a lesson in stamina, commitment and inner strength from the master himself, Michael Jordan.

I agree with Time magazine's assessment this week that what we have seen in Mr. Jordan during his remarkable career we may never see again. I heartily congratulated the gentleman from Illinois (Mr. DAVIS) on winning this and would like to present this from Scottie Pippen to the gentleman and congratulate him again on an outstanding home team and their sixth National Basketball Association Title.

This is a team that has set the standard in basketball for decades to come. And if there ever is another team like them, I hope I have learned to quit betting against them.

ON THE CHICAGO BULLS AND THE UTAH JAZZ

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

Mr. DAVIS of Illinois. Mr. Speaker, I want to thank the most honorable gentleman from Utah for his most gracious concession speech.

Those of us in Chicago spent a lot of time on the edge of our seats. As a matter of fact, we had to put our hospital emergency rooms on alert because so many of our people were about to have heart attacks thinking that Utah might win.

Well, the fact of the matter is that they are both great and outstanding basketball teams who gave America many delights and many thrills. So we want to congratulate the Utah Jazz for being superworthy opponents, and we want to acknowledge their great contribution to the game of basketball.

We want to thank Scottie Pippen, who happens to be my home boy. We both grew up in the State of Arkansas, 12 miles from each other, and I want to thank Scottie for this basketball.

But I also want to make a presentation to the gentleman from Utah (Mr. COOK) so that he will always remember that the Chicago Bulls are indeed number one and that Chicago is a first class city and a world class town.

So on behalf of the Chicago Bulls and all of the people of Chicago, I want to present to the gentleman this Chicago Bulls cap to keep forever and forever and I thank him so very much.

ON THE PATIENTS' BILL OF RIGHTS

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

Mr. ALLEN. Mr. Speaker, it is tough to move from basketball back to health care. Perhaps the connection is that last night the congressional baseball game was held and it was injury free, a very remarkable feat.

Mr. Speaker, there is a crisis of confidence in American health care today. A majority of consumers believe that insurance plans often compromise the quality of care to save money. Managed care must be more than managed cost.

I am concerned that we are going to see a fig tree growing in the House of Representatives, proposals from the other side, from the Republican leadership, that are no more than fig leaves. We have seen it with campaign finance reform. We can see it coming with tobacco. It may come with HMOs as well.

The solution to our problem is the Democrat-sponsored Patients' Bill of Rights Act of 1998. It provides access to necessary care. It ensures access to specialists. It provides direct access to a specialist for patients with serious ongoing conditions. It would allow women to see their obstetrician or gynecologist without prior authorization, and it requires access to and payment for emergency room service. It also provides a fair and timely appeals process when health care plans deny care, and it provides protections for the patient-provider relationship.

It does that by banning gag clauses. It protects providers who advocate on behalf of their patients, and prevents drive-through mastectomies.

I urge my colleagues to supported the Patients' Bill of Rights Act of 1998.

COMMUNICATION FROM THE
CLERK OF THE HOUSE

The Speaker pro tempore (Mr. BLUNT) laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, June 24, 1998.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on June 23, 1998 at 9:05 p.m. and said to contain a message from the President whereby he returns without his approval H.R. 2709, the "Iran Missile Proliferation Sanctions Act of 1998."

With warm regards,

ROBIN H. CARLE.

IRAN MISSILE PROLIFERATION
SANCTIONS ACT OF 1998—VETO
MESSAGE FROM THE PRESIDENT
OF THE UNITED STATES (H. DOC.
NO. 105-276)

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 2709, the "Iran Missile Proliferation Sanctions Act of 1998."

H.R. 2709 would require sanctions to be imposed on foreign individuals and companies if there is "credible infor-

mation indicating that" they transferred certain items or provided certain types of assistance that contributed to Iran's missile program, or attempted more than once to transfer such items or provide such assistance. These sanctions would last at least 2 years and would prohibit sales of defense articles and services; exports of certain dual-use items; and United States Government assistance.

My Administration unequivocally supports the critical objectives of fighting terrorism and taking steps to halt the transfer of missile technology to nations whose foreign policy practices and nonproliferation policies violate international norms. This legislation, however, is indiscriminate, inflexible, and prejudicial to these efforts, and would in fact undermine the national security objectives of the United States. Taken together, the flaws in H.R. 2709 risk a proliferation of indiscriminate sanctioning worldwide.

Such indiscriminate sanctioning would undermine the credibility of U.S. nonproliferation policy without furthering U.S. nonproliferation objectives. Indeed, the sweeping application of sanctions likely would cause serious friction with many governments, diminishing vital international cooperation across the range of policy areas—military, political, and economic—on which U.S. security and global leadership depend.

Specifically, H.R. 2709 would require the imposition of sanctions based on an unworkably low standard of evidence: "credible information indicating that" certain transfers or attempted transfers had occurred. Such a low standard of evidence could result in the erroneous imposition of sanctions on individuals and business entities worldwide—even in certain instances when they did not know the true end user of the items. The bill would also hinder U.S. efforts to enlist the support of other countries to halt the objectionable activities by imposing an unreasonable standard for waiving the bill's sanctions. In addition, the sanctions proposed by the legislation are disproportionate. A minor violation (e.g., the transfer of a few grams of aluminum powder) would carry the same penalty as a transfer of major proliferation significance. This, too, undermines U.S. credibility and increases foreign opposition to U.S. policy.

H.R. 2709 does not specifically refer to Russia, but it will affect that country. The legislation does not allow flexibility sufficient to reflect the progress made by the Russian government in formulating policies and processes whose goal is to sever links between Russian entities and Iran's ballistic missile program. At the urging of the United States, President Yeltsin, the Prime Minister, Russian security services Chief Kovalev, and Russian Defense Minister Sergeyev have all made clear that proliferation of missiles and weapons of mass destruction is a serious threat to Russia's security.

They have called for strict control of sensitive technologies and stressed the strict penalties that will be imposed for violations of Russian law. On January 22 of this year, the Russian government issued a "catch all" executive order providing authority to stop all transfers of dual-use goods and services for missiles and weapons of mass destruction programs, and on May 15 published detailed regulations to implement that order. They have recently developed and circulated a list of end users of concern in Iran, Libya, North Korea, and Pakistan. In the course of regular and active discussion of this issue with the Russian government, the United States has raised problem cases involving cooperation between Russian entities and the Iranian missile program. We have seen progress in this area, and a number of these cases are no longer active concerns.

Precisely because Russia needs to take effective enforcement steps to control the flow of technology, the United States needs to be able to work cooperatively with the Russian government to assure further progress. H.R. 2709 would undercut the cooperation we have worked to achieve with the Russian government without helping us solve the problem of technology transfer. The legislation's unilateral nature could also hurt our increasing cooperation with Russian government agencies in other vital areas such as law enforcement, counter-narcotics, and combating transnational crime. Furthermore, Russia would interpret this law as an infringement of its sovereignty, affecting our ability to work with Russia on broader U.S. policy goals and on regional and global issues.

Finally, Title I of H.R. 2709 is not needed. Existing law, such as the missile technology control provisions of the Arms Export Control Act, provides a sufficient basis for imposing sanctions to prevent missile proliferation to Iran and elsewhere.

I also note that it is disappointing that the Congress attached Title II, the "Chemical Weapons Convention Implementation Act of 1997," to this problematic and counterproductive bill. Because Chemical Weapons Convention (CWC) implementation legislation has not been enacted, the United States has not yet fully carried out its obligations under the CWC. The CWC implementing legislation has strong bipartisan support, and should be passed by the Congress as a free-standing bill without further delay. I note, however, that sections 213(e)(2)(B)(iii), 213(e)(3)(B)(v), and 213(f) of Title II could interfere with certain of my exclusive constitutional powers, and I urge the Congress to correct these constitutional deficiencies.

For the reasons stated, I am compelled to return H.R. 2709 without my approval.

WILLIAM J. CLINTON.

THE WHITE HOUSE, June 23, 1998.

□ 1030

The SPEAKER pro tempore (Mr. GUTKNECHT). The objections of the President will be spread at large upon the Journal and, without objection, the message and bill will be printed as a House document.

There was no objection.

Mr. BLUNT. Mr. Speaker, I ask unanimous consent that the message of the President, together with the accompanying bill, H.R. 2709, be referred to the Committee on International Relations.

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

There was no objection.

UTAH SCHOOLS AND LANDS EXCHANGE ACT OF 1998

Mr. HANSEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3830) to provide for the exchange of certain lands within the State of Utah, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

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

Mr. FALEOMAVAEGA. Mr. Speaker, reserving the right to object, I yield to the gentleman from Utah (Mr. HANSEN) for an explanation of this legislation.

Mr. HANSEN. Mr. Speaker, I appreciate the gentleman from American Samoa yielding to me. Mr. Speaker, H.R. 3830 represents a landmark agreement between the State of Utah and the Department of the Interior to exchange nearly 500,000 acres of lands within the State of Utah to benefit the school children of Utah.

Over 20 years ago, while serving in the Utah State Legislature and as Speaker of the House, I worked closely with then Governor Scott Matheson to solve the problem of the disbursed school trust lands in Utah and the best way to live up to the mandate of generating revenues for the school children of Utah.

Governor Matheson came up with Project Bold, wherein we would block up school trust lands in exchanges with the Federal Government. This seemed like a somewhat radical idea at the time but Governor Matheson actually had foresight that brought us here today.

Finally, during the 103rd Congress we were able to pass Public Law 103-93 that was designed to exchange these lands out of parks and national forests. However, difficulties with placing a value on these isolated tracts became impossible.

Then in September of 1996 President Clinton signed the proclamation that locked up the largest and cleanest supply of coal left in the Nation when he created the new Grand Staircase-Escalante National Monument. Unfortunately, a large share of this coal, not

to mention the oil and gas in the monument, belongs to the school children of Utah. Thus, the pressure was on the administration to live up to the promises made by the President to ensure the school children would not suffer from the creation of the monument.

Therefore, on May 8, Secretary Babbitt and Governor Leavitt signed an agreement to trade out all of the school trust lands within national parks, forest service, and the monument for BLM acres elsewhere in the State, substantial coal interests, and \$50 million. This is an equal value exchange. It is fair and equitable to all parties involved. I commend the Governor and the Secretary for finding a way to put all of the difficult issues of Utah aside and finally find a solution to help the school children of Utah.

I would like to thank my colleague, the gentleman from American Samoa (Mr. FALEOMAVAEGA) for his help in expediting this legislation to this day, and I appreciate his understanding of this important issue.

Mr. FALEOMAVAEGA. Mr. Speaker, further reserving the right to object, Utah Governor Leavitt and Interior Secretary Babbitt signed a historic and unique agreement on May 8 of this year to provide for an exchange of lands between the State of Utah and the Federal government.

H.R. 3830 legislatively ratifies that agreement, under which the United States would acquire approximately 410,718 acres of land and minerals owned by the State of Utah that are inholdings within the Grand Staircase-Escalante National Monument, units of the national park and national forest systems and two Indian reservations, and in return would transfer to the State approximately 138,647 acres of public land and minerals and \$50 million.

The lands involved in the exchange have been a major source of contention for both the State of Utah and the Federal Government. We have spent many hours in the Committee on Resources dealing with issues associated with the lands covered by the agreement. This agreement puts the land exchange issue to rest in what I believe is a fair and equitable manner, and I am all for it.

I want to commend Governor Leavitt and Secretary Babbitt for their leadership. For far too long this issue has frustrated efficient land management, sapped people's energies, and prevented benefits from accruing to the Utah School Trust and the Nation.

These two gentlemen, with the support of many others, recognized that the current situation was doing nothing for the people or the resources. Paraphrasing the former Governor of Utah, Governor Matheson, they have taken a "bold" step in resolving this long-festering issue.

Mr. Speaker, I support H.R. 3830 and hope that my colleagues will also support this legislation.

Mr. HINCHEY. Mr. Speaker, I am very pleased to see the House taking up this legis-

lation today authorizing an exchange agreement between the Interior Department and the State of Utah. The agreement would resolve a number of longstanding problems arising from the enclosure of Utah school trust lands in Federal reservations. I believe that a settlement of these issues will be good news for the people of Utah and the people of all our states.

The agreement may appear to be a local matter, but in fact it concerns all of use, and is important to all of us. The lands and money that Utah's School Trust will receive under the agreement are the property of all Americans, and the land Utah proposes to exchange will become the property of all Americans. And we will be proud to accept them. As a non-Utahn, I want to join my friends and colleagues from Utah in urging that Congress move as quickly as possible on this matter.

Historically, it has been difficult to arrange exchanges in the State of Utah, leaving gaps and inholdings in some of our spectacular national parks there, and most recently, in the new Grand Staircase-Escalante National Monument. Some people thought it would be impossible to work out this exchange, because of the deep differences among the different interested parties. But it has been accomplished. It shows that negotiations can work, and it shows that both sides can come away satisfied.

It takes a real commitment on both sides for negotiations to work. Above all it takes a willingness to face the realities of the situation and to give up dreams of an ideal solution. In this case, many people deserve credit for what has been accomplished. I want to compliment Secretary Babbitt and Governor Leavitt for their commitment to making this process work, and the staffs at the Department of Interior and the Utah School and Institutional Trust Lands Administration for their hard work on the practical details. Here in the House, our colleague CHRIS CANNON deserves special commendation for his dedicated efforts to get this process going. I was happy to work cooperatively with him on this. We have many differences among us on the best disposition of federal lands in Utah, but we have no difference on the question of the importance of settling these exchanges.

Resolution of these exchanges will produce two great benefits for the public. First, SITLA will receive money and lands with real income-producing potential that can increase funding for Utah's schools. I believe that the children almost always benefit when more funding is available for education so I'm delighted with that result. Most importantly, if this bill is enacted, they will start seeing the benefits very quickly. Second, the people of the United States will receive the trust lands now enclosed within the Grand Staircase-Escalante National Monument. This will give the Interior Department the opportunity to manage this magnificent territory in accord with its nature, and not according to arbitrary lines on the map. The possibility that inappropriate development will mar the wild beauty of the Monument or interfere with its wildlife will, I hope, be eliminated with this exchange.

Again, my thanks and congratulations to all who worked on this agreement. I urge my colleagues to support this bill, and hope it will be enacted as soon as possible.

Mr. FALEOMAVAEGA. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The Clerk read the bill, as follows:

H.R. 3830

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 "Utah Schools and Lands Exchange Act of 1998".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The State of Utah owns approximately 176,600 acres of land, as well as approximately 24,165 acres of mineral interests, administered by the Utah School and Institutional Trust Lands Administration, within the exterior boundaries of the Grand Staircase-Escalante National Monument, established by Presidential proclamation on September 18, 1996, pursuant to section 2 of the Antiquities Act of 1906 (16 U.S.C. 431). The State of Utah also owns approximately 200,000 acres of land, and 76,000 acres of mineral interests, administered by the Utah School and Institutional Trust Lands Administration, within the exterior boundaries of several units of the National Park System and the National Forest System, and within certain Indian reservations in Utah. These lands were granted by Congress to the State of Utah pursuant to the Utah Enabling Act, chap. 138, 28 Stat. 107 (1894), to be held in trust for the benefit of the State's public school system and other public institutions.

(2) Many of the State school trust lands within the monument may contain significant economic quantities of mineral resources, including coal, oil, and gas, tar sands, coalbed methane, titanium, uranium, and other energy and metalliferous minerals. Certain State school trust lands within the Monument, like the Federal lands comprising the Monument, have substantial non-economic scientific, historic, cultural, scenic, recreational, and natural resources, including ancient Native American archeological sites and rare plant and animal communities.

(3) Development of surface and mineral resources on State school trust lands within the monument could be incompatible with the preservation of these scientific and historic resources for which the monument was established. Federal acquisition of State school trust lands within the monument would eliminate this potential incompatibility, and would enhance management of the Grand Staircase-Escalante National Monument.

(4) The United States owns lands and interest in lands outside of the monument that can be transferred to the State of Utah in exchange for the monument inholdings without jeopardizing Federal management objectives or needs.

(5) In 1993, Congress passed and the President signed Public Law 103-93, which contained a process for exchanging State of Utah school trust inholdings in the National Park System, the National Forest System, and certain Indian reservations in Utah. Among other things, it identified various Federal lands and interests in land that were available to exchange for these State inholdings.

(6) Although Public Law 103-93 offered the hope of a prompt, orderly exchange of State inholdings for Federal lands elsewhere, implementation of the legislation has been very slow. Completion of this process is realistically estimated to be many years away, at great expense to both the State and the United States in the form of expert wit-

nesses, lawyers, appraisers, and other litigation costs.

(7) The State also owns approximately 2,560 acres of land in or near the Alton coal field which has been declared an area unsuitable for coal mining under the terms of the Surface Mining Control and Reclamation Act. This land is also administered by the Utah School and Institutional Trust Lands Administration, but its use is limited given this declaration.

(8) The large presence of State school trust land inholdings in the monument, national parks, national forests, and Indian reservations make land and resource management in these areas difficult, costly, and controversial for both the State of Utah and the United States.

(9) It is in the public interest to reach agreement on exchange of inholdings, on terms fair to both the State and the United States. Agreement saves much time and delay in meeting the expectations of the State school and institutional trusts, in simplifying management of Federal and Indian lands and resources, and in avoiding expensive, protracted litigation under Public Law 103-93.

(10) The State of Utah and the United States have reached an agreement under which the State would exchange of all its State school trust lands within the monument, and specified inholdings in national parks, forests, and Indian reservations that are subject to Public Law 103-93, for various Federal lands and interests in lands located outside the monument, including Federal lands and interests identified as available for exchange in Public Law 103-93 and additional Federal lands and interests in lands.

(11) The State school trust lands to be conveyed to the Federal Government include properties within units of the National Park System, the National Forest System, and the Grand Staircase-Escalante National Monument. The Federal assets made available for exchange with the State were selected with a great sensitivity to environmental concerns and a belief and expectation by both parties that Federal assets to be conveyed to the State would be unlikely to trigger significant environmental controversy.

(12) The parties agreed at the outset of negotiations to avoid identifying Federal assets for conveyance to the State where any of the following was known to exist or likely to be an issue as a result of foreseeable future uses of the land: significant wildlife resources, endangered species habitat, significant archaeological resources, areas of critical environmental concern, coal resources requiring surface mining to extract the mineral deposits, wilderness study areas, significant recreational areas, or any other lands known to raise significant environmental concerns of any kind.

(13) The parties further agreed that the use of any mineral interests obtained by the State of Utah where the Federal Government retains surface and other interest, will not conflict with established Federal land and environmental management objectives, and shall be fully subject to all environmental regulations applicable to development of non-Federal mineral interest on Federal lands.

(14) Because the inholdings to be acquired by the Federal Government include properties within the boundaries of some of the most renowned conservation land units in the United States, and because a mission of the Utah School and Institutional Trust Lands Administration is to produce economic benefits for Utah's public schools and other beneficiary institutions, the exchange of lands called for in this agreement will resolve many longstanding environmental con-

flicts and further the interest of the State trust lands, the school children of Utah, and these conservation resources.

(15) The Congress finds that, under this Agreement taken as a whole, the State interests to be conveyed to the United States by the State of Utah, and the Federal interests and payments to be conveyed to the State of Utah by the United States, are approximately equal in value.

(16) The purpose of this legislation is to enact into law and direct prompt implementation of this historic agreement.

SEC. 3. RATIFICATION OF AGREED EXCHANGE BETWEEN THE STATE OF UTAH AND THE DEPARTMENT OF THE INTERIOR.

(a) AGREEMENT.—The State of Utah and the Department of the Interior have agreed to exchange certain Federal lands, Federal mineral interests, and payment of money for lands and mineral interests managed by the Utah School and Institutional Trust Lands Administration, lands and mineral interests of approximately equal value inheld within the Grand Staircase-Escalante National Monument the Goshute and Navajo Indian Reservations, units of the national park system, the national forest system, and the Alton coal fields.

(b) RATIFICATION.—All terms, conditions, procedures, covenants, reservations, and other provisions set forth in the document entitled "Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America" (herein referred to as "the Agreement") are hereby incorporated in this title, are ratified and confirmed, and set forth the obligations and commitments of the United States, the State of Utah, and Utah School and Institutional Trust Lands Administration (herein referred to as "SITLA"), as a matter of Federal law.

SEC. 4. LEGAL DESCRIPTIONS.

(a) IN GENERAL.—The maps and legal descriptions referred to in the Agreement depict the lands subject to the conveyances.

(b) PUBLIC AVAILABILITY.—The maps and descriptions referred to in the Agreement shall be on file and available for public inspection in the offices of the Secretary of the Interior and the Utah State Director of the Bureau of Land Management.

(c) CONFLICT.—In case of conflict between the maps and the legal descriptions, the legal descriptions shall control.

SEC. 5. COSTS.

The United States and the State of Utah shall each bear its own respective costs incurred in the implementation of this Act.

SEC. 6. REPEAL OF PUBLIC LAW 103-93 AND PUBLIC LAW 104-211.

The provisions of Public Law 103-93 (107 Stat. 995), other than section 7(b)(1), section 7(b)(3) and section 10(b) thereof, are hereby repealed. Public Law 104-211 (110 Stat. 3013) is hereby repealed.

SEC. 7. CASH PAYMENT PREVIOUSLY AUTHORIZED.

As previously authorized and made available by section 7(b)(1) and (b)(3) of Public Law 103-93, upon completion of all conveyances described in the Agreement, the United States shall pay \$50,000,000 to the State of Utah from funds not otherwise appropriated from the Treasury.

SEC. 8. SCHEDULE FOR CONVEYANCES.

All conveyances under sections 2 and 3 of the agreement shall be completed within 70 days after the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3830, the bill just passed.

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

There was no objection.

MINERAL LEASING IN FORT BERTHOLD INDIAN RESERVATION

Mr. HANSEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2069) to permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration for lease, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

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

Mr. FALEOMAVAEGA. Mr. Speaker, reserving the right to object, I yield to the gentleman from Utah (Mr. HANSEN) to explain the legislation.

Mr. HANSEN. Mr. Speaker, I appreciate my friend, the gentleman from American Samoa, yielding to me.

Mr. Speaker, S. 2069 would permit the leasing of mineral rights in any case in which the Indian owners of an allotment that is located within the boundaries of the Fort Berthold Indian Reservation and held in trust of the United States have executed leases to more than 50 percent of the mineral estate of that allotment.

S. 2069 would facilitate oil and gas exploration on the Fort Berthold Indian reservation by allowing the Secretary of Interior to approve mineral leases affecting individually owned Indian land if a majority of the owners of the undivided mineral interest consent to that mineral lease.

S. 2069 would supersede a 1909 law which provides that the Secretary may not approve a mineral lease affecting individually owned Indian land unless every single person who has an undivided mineral interest in that land consents.

Approximately 70 percent of the individually owned tracts of land in the Fort Berthold Indian Reservation are owned by groups of 20 or more individuals. Some tracts are owned by 200 individuals. In many instances these individuals have not been identified, nor can they be located.

The requirements of the 1909 law have proven to be so difficult to meet that very little oil production has taken place on individually owned Indian land within a geological basin which has produced over one billion barrels of oil.

The Mandan Indian Nation and Hidatsa Indian Nation and the Arikara

Indian Nation all support S. 2069. The administration supports S. 2069.

The House, on November 12, 1997 passed legislation which contained the language which is now S. 2069. In effect, we will be passing for a second time a bill which can go directly to the White House for the President's signature.

This is a good piece of legislation. It solves a big problem created by an out-of-date law, and I recommend its passage. I appreciate the gentleman yielding to me.

Mr. FALEOMAVAEGA. Further reserving the right to object, Mr. Speaker, this important and bipartisan bill has as its single goal the promotion of economic development on the Fort Berthold Indian Reservation in North Dakota, home to the Mandan, Hidatsa, and Arikara Indian tribes.

Their reservation sits on the oil-rich Williston Basin, and the tribes seek to gain much-needed revenues through a development agreement with the Alberta Energy Company. The lands surrounding the reservation have been the subject of much exploratory activity. That agreement would allow these tribes to develop oil and gas reserves on tribal lands as well as lands allotted to tribal members.

But congressional approval of mineral leasing rights is required in this instance in order to overcome the problem of fractionated heirship, a problem that is widespread throughout Indian country. Basically, fractionated heirship is the result of Federal and Indian policy which provides that lands held in trust for Indians are passed down from generation to generation so that each successive generation of heirs owns an undivided interest in the original lands.

Thus, parcels of lands such as those allotted in Fort Berthold have as many as 200 owners. Seventy percent of the Fort Berthold allotments have 20 owners. So in order to execute a lease, every individual with an ownership interest in a parcel of land has to agree to the lease. If one person objects, the lease will fail. The same thing will happen if one owner cannot be found.

□ 1045

This arrangement simply creates too much of a headache for interested developers to make it worth their while to bring their activities to allotted Indian lands.

What the Fort Berthold bill does is allow a leasing agreement to go forward when less than 100 percent of the owners of a particular allotment agree to the lease. In this case, the bill requires that at least as many owners as own 50 percent of the ownership interest in an allotment must agree to the lease. Furthermore, the Secretary of the Interior must still approve the leasing arrangements, thus continuing to exercise the United States' trust responsibility. Of course, the bill only applies to the Fort Berthold Reservation.

In a certain sense, Mr. Speaker, there will be a lot of tribes watching this sit-

uation. Fractionated heirship is a widespread problem, and it is a major source of the trust funds problem that also plagues the tribes and the administration. The administration has already sent Congress legislation to consolidate allotment ownership. But if the Fort Berthold situation works out well, I believe other tribes may well look to this legislation for ideas as well.

Mr. Speaker, again I thank the gentleman from Utah, the chairman of the Subcommittee on National Parks and Public Lands, for his leadership and management of this legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. GUTKNECHT). Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2069

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

SECTION 1. LEASES OF ALLOTTED LANDS OF THE FORT BERTHOLD INDIAN RESERVATION.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this section:

(A) INDIAN LAND.—The term "Indian land" means an undivided interest in a single parcel of land that—

(i) is located within the Fort Berthold Indian Reservation in North Dakota; and

(ii) is held in trust or restricted status by the United States.

(B) INDIVIDUALLY OWNED INDIAN LAND.—The term "individually owned Indian land" means Indian land that is owned by 1 or more individuals.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) EFFECT OF APPROVAL BY SECRETARY OF THE INTERIOR.—

(A) IN GENERAL.—The Secretary may approve any mineral lease or agreement that affects individually owned Indian land, if—

(i) the owners of a majority of the undivided interest in the Indian land that is the subject of the mineral lease or agreement (including any interest covered by a lease or agreement executed by the Secretary under paragraph (3)) consent to the lease or agreement; and

(ii) the Secretary determines that approving the lease or agreement is in the best interest of the Indian owners of the Indian land.

(B) EFFECT OF APPROVAL.—Upon the approval by the Secretary under subparagraph (A), the lease or agreement shall be binding, to the same extent as if all of the Indian owners of the Indian land involved had consented to the lease or agreement, upon—

(i) all owners of the undivided interest in the Indian land subject to the lease or agreement (including any interest owned by an Indian tribe); and

(ii) all other parties to the lease or agreement.

(C) DISTRIBUTION OF PROCEEDS.—The proceeds derived from a lease or agreement that is approved by the Secretary under subparagraph (A) shall be distributed to all owners of the Indian land that is subject to the lease or agreement in accordance with the interest owned by each such owner.

(3) EXECUTION OF LEASE OR AGREEMENT BY SECRETARY.—The Secretary may execute a

mineral lease or agreement that affects individually owned Indian land on behalf of an Indian owner if—

(A) that owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined; or

(B) the heirs or devisees referred to in subparagraph (A) have been determined, but 1 or more of the heirs or devisees cannot be located.

(4) PUBLIC AUCTION OR ADVERTISED SALE NOT REQUIRED.—It shall not be a requirement for the approval or execution of a lease or agreement under this subsection that the lease or agreement be offered for sale through a public auction or advertised sale.

(b) RULE OF CONSTRUCTION.—This Act supersedes the Act of March 3, 1909 (35 Stat. 783, chapter 263; 25 U.S.C. 396) only to the extent provided in subsection (a).

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

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

There was no objection.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The SPEAKER pro tempore. Pursuant to House Resolution 482 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4101.

□ 1045

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4101) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, June 23, 1998, amendment No. 2 offered by the gentleman from New Hampshire (Mr. BASS) had been disposed of and section 738 had been read.

Are there further amendments to this portion of the bill?

AMENDMENT OFFERED BY MR. MILLER OF FLORIDA

Mr. MILLER of Florida. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of Florida:

Add after the final section the following new section:

SEC. ____ None of the funds made available in this Act may be used to make available or administer, or to pay the salaries of personnel of the Department of Agriculture who make available or administer, a loan to a processor of sugarcane or sugar beets during fiscal year 1999 under section 156 of the Agricultural Market Transition Act (7 U.S.C. 7272) at a loan rate in excess of 17 cents per pound for raw cane sugar and 21.9 cents per pound for refined beet sugar.

The CHAIRMAN. Pursuant to the order of the Committee of Tuesday, June 23, 1998, the gentleman from Florida (Mr. MILLER) will control 30 minutes, and the gentleman from New Mexico (Mr. SKEEN) and the gentleman from Ohio (Ms. KAPTUR) or her designee each will control 15 minutes.

The Chair recognizes the gentleman from Florida (Mr. MILLER).

Mr. MILLER of Florida. Mr. Chairman, I yield myself such time as I may consume. This amendment is a modest change in the sugar program in this country, a one-cent change in sugar prices in this country.

Most of my colleagues do not realize that the sugar program is one of those old-fashioned programs where the Federal Government here in Washington has the bureaucracy that set a high price on sugar. This is not part of the free enterprise system that most people think we have. We have a price of sugar that the government sets that is over twice what the price is around the world. In Canada the price of sugar is about 9 cents a pound. In the United States it is about 22, 23 cents a pound. This makes zero economic sense.

In 1996 we passed Freedom to Farm, a very significant and historic piece of legislation for agriculture, because it really had a lot of reforms that were very important and good for this country and good for farmers. Our farmers are very effective and productive farmers around the world. We are huge exporters of agricultural products. But while we reformed lots of the grain programs and other programs, we did not reform sugar. Sugar was one product that basically escaped reform in the 1996 farm reform bill. The price of sugar back before we had reform was about 22, 23 cents a pound, and it is staying at that price because the government program continues to exist to force the price up high while world prices have dropped down to about 9 cents a pound.

One of the things I would point out, I remember reading right after the passage of the Freedom to Farm bill what the historic change was. In Time magazine there was an article not focusing on the good things in that bill but about the sugar sweet deal that the sugar farmers got by not reforming sugar and whether it was ABC News who did a story earlier this year about "It's Your Money", or Readers Digest had a story earlier this year, or the New York Times, they all referred to the fact that sugar was not reformed. So as much as my opponents might

say, "Oh, we reformed it," the bottom line is sugar prices are the same basically as they were before we reformed it.

Let me describe briefly how the program works. The program works, that we cannot grow enough sugar in this country so we must import sugar. So what the government does is it controls the amount of sugar allowed into this country and by basic supply and demand forces prices up high. So while the world price is about 9 cents right now, in fact, if you look at the Wall Street Journal, you look at commodity prices, you have two prices for sugar, the price we pay in the United States and the price around the world.

What is crazy about this, for example, Australia, one of the largest exporters of sugar in the world, and it is not a subsidized program in Australia, they will sell their sugar to anyone for 9 cents a pound, but the United States, what do they sell it to us for? Twenty-two cents a pound or so. It is crazy. That is foreign aid. That is corporate subsidy of Australian sugar farmers. Whether we import it from the Dominican Republic or Brazil or wherever, we are subsidizing foreign sugar growers in this program.

This program of sugar that we have in this country is bad for consumers, it is bad for jobs, and it is certainly bad for the environment. For the consumers, they pay a higher price for sugar, not just the sugar we buy off the shelves in the store but so many different items of food contain sugar, whether it is the candy, whether it is cough drops, whether it is ice cream or baked goods, sugar is part of that and it is part of the total cost of the production. We all know basic economics will tell you that cost and prices are related.

It is bad for the environment. I come from Florida. A great treasure of the State of Florida is the Florida Everglades. Sadly it has been damaged over the past 50 years for a variety of reasons, not just because of agriculture certainly. We are in the process now of trying to restore the Everglades. We have lost 50 percent of the Florida Everglades for a variety of reasons, for agriculture and development and more people in the State of Florida. But we found out this week that it is going to cost us \$7.5 billion over the next 20 years to restore the Everglades as best as we can. A large part of the problem is the amount of acreage going for sugar production, 500,000 acres. And part of the solution is to buy a lot of that sugar land and also to build retention ponds to filter the water that flows off the sugar fields. How much is sugar paying in this plan? Less than 5 percent of the cost. They are not even carrying their full load. But in addition to that, because we have this crazy sugar program, we are having to pay inflated prices for the land we are buying from the sugar farmers. We create a program that makes the land more valuable and creates incentives to

produce more sugar in the Everglades, and then we are going to have to go out and buy it and pay this inflated price. That is the kind of screwy government program that this is.

And jobs. This is a job loser in this country. Because we restrict the amount of sugar imported, refineries are closing around this country. They have been closing for years because of this program. These are good jobs, union jobs by the way, because I have got letters of support from organized labor saying, "We're losing union jobs."

It is also bad for the users of sugar. For example, one of the classic cases is Bob's Candy down in Georgia that makes candy canes. They pay this high price for sugar. They have opened a facility down in the Caribbean. The same sugar is costing less than half the amount. Here is a company that has been in business for three generations and they are having a hard time to compete. Whether it is cereal, what have you, the jobs are not coming to this country. They are producing the cough drops in England and sending us cough drops rather than allowing us to manufacture them in this country. It is a job loser in this country.

The bottom line, Mr. Chairman, is that it is bad for the consumer, it is bad for jobs and economic growth in this country, and it is certainly bad for the environment. I think it is time that we get rid of this big government program that no longer belongs in the free enterprise country we live in today.

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

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Oregon (Mr. SMITH), the chairman of the Committee on Agriculture.

(Mr. SMITH of Oregon asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Oregon. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is not a minimal issue at all. I hope Members will listen, because again I want to reiterate, a contract was made with agriculture in 1996 that will be ending in the year 2002, that all subsidies on all crops will be eliminated.

In the face of that contract, why are we singling out sugar growers? This is not an attack on sugar companies. This is an attack on people who grow sugar, who work in the fields. Why should we distinguish them from soybeans or wheat or corn, if that happens to be your crop? "Oh, no, we have to identify sugar. Let's take them out of the contract."

I say, "Wrong." We made a contract, let us stick with it.

Is this a minimal question? Well, the people from CoBank do not think so, because the senior Vice President, Mr. Cassidy, wrote a letter to the gentleman from Louisiana (Mr. LIVING-

STON) on June 18, 1998, at which time this senior Vice President said, "Look, we finance about 2,000 customers. There are \$1 billion worth of loans in jeopardy if this amendment passes."

Banks do not operate on tomorrow. They operate on a year and two and three-year commitments. Therefore, we are jeopardizing many, many sugar growers. Why do that? Do not pass this amendment. Stay with the contract the Congress made with farmers and with agriculture until the year 2002.

Mr. Chairman, I include for the RECORD the letter from Mr. Jack Cassidy to Chairman LIVINGSTON.

The text of the letter is as follows:

COBANK,

Denver, CO, June 18, 1998.

Hon. ROBERT L. LIVINGSTON,
Chairman, House Appropriations Committee,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I'm writing to express CoBank's opposition to an amendment to the pending Agricultural Appropriations bill that would effectively end the federal sugar policy.

With \$19 billion in assets, CoBank is the largest bank in the Farm Credit System. We provide financing to about 2,000 customers, including agricultural cooperatives, rural utility systems, and to support the export of agricultural products. At present, CoBank has 25 farmer-owned cooperative customers involved in the sugar or sweetener industry, with loans from CoBank totaling nearly \$1 billion. CoBank's customers, their farmer members, and CoBank itself have made numerous business decisions and financial commitments based on the seven-year farm bill passed by Congress in 1996. As you know, that legislation included provisions vital to the U.S. sugar industry at no cost to U.S. taxpayers. Great hardship would result to sugar farmers and their cooperatives if Congress fails to live up to the commitments made as part of the farm bill.

For these reasons, we urge you to support the existing farm bill provisions and oppose any proposals that would undermine the existing sugar policy.

Please call me at 1-800/542-8072, extension 4362, if you or your staff have any questions.

Sincerely,

JACK E. CASSIDY,
Senior Vice President.

Ms. KAPTUR. Mr. Chairman, I yield the 15 minutes under my control in this debate to the gentleman from Hawaii (Mr. ABERCROMBIE), a key leader in this House and truly one of the most knowledgeable and hardworking and influential leaders on U.S. sugar policy. I would have to say that no one could be a finer spokesman both for our producers as well as our farm workers than the gentleman from Hawaii.

The CHAIRMAN. Without objection, the gentleman from Hawaii (Mr. ABERCROMBIE) will control 15 minutes, and is recognized.

There was no objection.

Mr. ABERCROMBIE. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri (Mr. GEPHARDT), the minority leader.

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

Mr. GEPHARDT. Mr. Chairman, I rise in strong opposition to the Miller amendment. I believe this amendment

is nothing more than a proposal to transfer wealth from farmers to giant food corporations. I believe it would harm hardworking farm families in rural communities across this country. Throughout much of farm country, farmers today are struggling. I want to reiterate that. Farmers in the upper Midwest and in the Midwest are struggling and having a very hard time paying their bills. The Republican freedom to fail farm bill has sharply reduced prices for sugar beets, wheat and other commodities. In States like Minnesota, North Dakota, Montana and Idaho, many family farmers grow both wheat and sugar beets. Wheat prices are down by 50 percent in just 2 years. Fifty percent. Sugar beet prices are down by 12 percent. The sugar program is one of the few areas that these farmers can go to in order to get through very tough times. Now some want to cut this last lifeline for these farmers.

This proposal would also harm rural economic development. The gentleman from Hawaii (Mr. ABERCROMBIE), who strongly opposes this amendment, has told me this program sustains 6,000 good-paying union jobs in his area, his State alone.

The winners under this amendment are big food corporations, not consumers. Although sugar and corn sweetener prices have dropped, sweetened product prices continue to go up. Nothing in this amendment assures consumers that they are going to get lower prices.

□ 1100

This is a bad effort. It will hurt farmers, it will hurt consumers, it will hurt our rural economy.

Democrats believe our farmers and rural communities deserve a fair return for their hard work.

Let us stand up for farmers and reject this amendment.

Mr. MILLER of Florida. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. SCHUMER) the cosponsor of this bill who has been leading this effort for years. Maybe this year we will have success.

Mr. SCHUMER. Mr. Chairman, I thank the gentleman from Florida (Mr. MILLER) for his able and capable leadership on this issue and rise in support of the amendment.

Mr. Chairman, it is time to put an end to the Federal Government's deal with the sugar industry and finally reform one of the most invidious, inefficient, Byzantine, special-interest, Depression-era Federal programs.

What do Americans get from the sugar program? Well, they get an additional 1.4 billion a year in higher prices at the checkout line. They get 500,000 acres of precious Florida wetlands destroyed and another 5 acres of Everglade land destroyed every day. They get to lose thousands of well-paying refinery jobs that are lost and sent overseas, like jobs at Domino Sugar in my district because the price of sugar is twice the world price.

Here is a list. Every red line, a refinery; a good-paying union job, as the

gentleman from Florida (Mr. MILLER) mentioned, gone, and huge subsidies to a few wealthy sugar barons.

We heard a lot about the family farmer. Fifty-eight percent of this subsidy, more than half, goes to Florida's Fanjul family, 58 percent of this subsidy goes to one family who one would not characterize as hardworking family farmers. No matter how we refine it, the sugar program is a sour deal.

Opponents of Miller-Schumer warn that our amendment undermines reforms made to the sugar program and hurts family farmers. Well, let us hear the facts. Miller-Schumer begins the critical and long-overdue step toward reform. It simply reduces the amount of money by which the government will subsidize sugar prices. It does not eliminate the subsidies; I think it should, but this is just 1 cent a pound. That is it. The government reduces the loan rate for sugar cane and beets by 1 cent. That is not too much to ask in an industry where the subsidy is \$472 an acre; \$472 an acre, 1,000 percent more than the subsidies for wheat, corn and cotton.

My friend from Oregon said, "Well, what about wheat, corn, cotton, all the others?" The one group that escaped any reform was sugar. This is just catching them up to the rest. It is the only commodity that was not reformed during the 1996 farm bill. They are still receiving a welfare check.

We have a lot of feeling in this Chamber: Let us get rid of the welfare system. My colleagues tell a poor mother of 18 years old, "Get rid of welfare." They do not tell Mr. Fanjul, "Get rid of welfare." They do not tell the wealthy farmers, "Get rid of welfare," or the big agribusinesses. They are the ones who get the loans.

Now I would like to make another point. We are talking about this issue as we debate campaign finance reform. If there was ever an issue that showed why we needed campaign finance reform, it is sugar.

There are many people of goodwill who disagree with me. Look at their districts and see why. I respect the gentleman from Hawaii and the gentlewoman from Hawaii. I respect the people from the upper Midwest who have lots of sugar beets in their district or some of the people from Florida who may disagree with Mr. MILLER. But we all know one thing in this Chamber. If a couple of wealthy contributors had not spread around the cash, this subsidy would have been gone a long time ago because people who have no interest in this program vote for it time and time and time again. Everyone knows, every single Member knows, that this program is kept alive because of campaign contributions, plain and simple, and the American people pay \$1.4 billion for that reason.

So I say in conclusion, if my colleagues care about jobs, vote for Miller-Schumer. If my colleagues care about the environment, and, by the way, the League of Conservation Voters

is going to make this a key vote, a key vote this year, then vote for Miller-Schumer. If my colleagues care about consumers and the extra dollars they are paying, vote for Miller-Schumer.

This proposal is long overdue, it is fair, it is transitory. We once and for all ought to do some real reform and not send 58 cents of every dollar our consumers pay to a couple of wealthy individuals who have a lot of clout around here.

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. EWING).

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

Mr. EWING. Mr. Chairman, opponents of this program claim that no changes were made in the 1996 farm bill, but that of course is not true. The fact is Congress has made major reforms to the sugar program in the 1996 farm bill, and this would be evident by looking at this chart, which my colleagues can see each of the sections with the red lines marked through it have been eliminated. That part of the program is gone. Over here we have new sugar policy, the reform policy.

Let me tell my colleagues that the sugar program is really protection at the border for the sugar industry in America. Without that protection we will have no sugar industry, and the world price of sugar is not what people say it is. That is the dump sugar price and should be called that.

The people who want to reduce the cost of sugar do not care if we have a sugar industry, they do not care if farmers in America continue to grow sugar. We have already reduced the cost of sugar with the 1996 program changes, and it will probably go down again, and we have said when other countries who subsidize their sugar quit subsidizing their sugar we will reduce the tariffs that protect the American sugar farmer. Protection at the border, that is what we have. There are no checks to the Fanjuls, there are no government checks to anyone. There is no government program subsidy; that is misleading, intentionally misleading. And there is, if my colleagues watched the last speaker's chart, not one refinery that has gone out of business since 1996.

Vote no on this amendment.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. MINGE).

Mr. MINGE. Mr. Chairman, the sponsors of this amendment are arguing that a 1-cent-per-pound reduction in the loan rate is minimal and insignificant. Nothing could be further from the truth.

Here is the truth, plain and simple:

The amendment is a \$150 million heist from the pockets of thousands of struggling family farmers in 16 States. Unlike the sponsors and supporters of this amendment, I know many of those farmers, and they are fighting to survive.

The truth is the amendment would reduce the 1985 raw sugar price level by 5.6 percent. Are the sponsors of this amendment willing to return to their 1985 salary levels and take an additional 5.6 percent reduction? Now that is a reality check.

We have an economic crisis that is brewing in rural America. Farmers want and need more alternative crops to grow and add value locally. Sugar is an alternative crop that provides a flexible supply of sugar to consumers. We need to continue this program especially in the upper Midwest that is being hit by an agricultural recession.

Mr. MILLER of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I rise in strong support of the Miller-Schumer amendment.

The U.S. sugar market is almost entirely controlled by the Department of Agriculture and the owners who benefit from its subsidies. The USDA's commodity loan program provides recipients loans at below market rates making taxpayers bear all the risks while forcing sugar prices on American consumers at twice the cost of the world market.

The U.S. sugar program stifles competition by not allowing market forces to work. It costs taxpayers millions of dollars a year in higher prices for sugar and sugar-containing products, and it is a job killer in the sugar cane refining industry. Since the program was enacted, thousands have lost their jobs. According to the General Accounting Office, this command-and-control policy costs American consumers 1.4 billion annually.

Mr. Chairman, at a time when we are encouraging foreign countries to implement free-market reforms, American price controls and import quotas should be a thing of the past. The Miller-Schumer amendment will make a modest change by lowering the loan rate 1 cent. This will not end the sugar program nor devastate the sugar producers, but it is a step in the right direction toward ending the sugar subsidy.

Mr. Chairman, I urge my colleagues to support the amendment.

Mr. SKEEN. Mr. Chairman I yield 1 minute to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Chairman, it is no wonder, as my colleagues know, that people lose faith in government, politics. This government made a contract with American farmers in 1996, and American farmers across the board gave up parts of their farm support programs, and sugar was no different. Sugar gave up its non-recourse loan program. Sugar, in fact, assessed itself \$288 million that is going to deficit reduction over the next 7 years. Sugar farmers relying upon that contract, tens of thousands of them in Louisiana, have made long-term commitments, and this little 1-cent reduction in the loan rate that people say will not devastate them translates to a 5.5 percent

reduction in the price of sugar for the farmer. For whom? For the big multinational sugar refining corporations.

On, yes, there is money and politics involved in this. America made a contract with its farmers. We ought to keep our word today. It is a 7-year contract. American farmers depend upon that contract, have made long-term commitments. Shame on this House if we break our word and violate that contract.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. HASTINGS).

Mr. HASTINGS of Florida. Mr. Chairman, today I rise to oppose in the strongest possible terms this amendment which would effectively kill off the United States sugar program.

As many of my colleagues know, I represent the second largest sugar producing district in the country. The gentleman from Florida (Mr. MARK FOLEY) my colleague, represents the largest.

Candidly, Mr. Chairman, I find it fascinating that we have Members in this body who know absolutely nothing about the U.S. sugar program. Not only do they not know about the program, they do not know the people that I know that will lose their jobs. It has already started to happen, not only in Florida but in California and in Hawaii where Mr. ABERCROMBIE comes from, and in Nebraska, Texas, Ohio, and Louisiana.

Do my colleagues know that the United States sugar industry creates more than 420,000 jobs in 42 States? Do my colleagues know that the United States sugar industry has a positive annual direct and indirect economic impact on the United States economy of more than \$26.2 billion?

Defeat Miller-Shumer.

Mr. Chairman, today I rise to oppose in the strongest possible terms this amendment which would effectively kill off the U.S. sugar program. As many of my colleagues know, I represent the second largest sugar producing district in the country. Candidly, Mr. Chairman, I find it fascinating that we have Members in this body who truly know nothing about the U.S. sugar program. Let me tell my colleagues something. If the Miller-Schumer amendment passes, literally thousands of American workers will be put out of work.

It has already started to happen. Not only in Florida but in California, Hawaii, Nebraska, Texas, Ohio, and Louisiana.

Do my colleagues know that the U.S. sugar industry creates more than 420,000 jobs in 42 states?

Do my colleagues know that the U.S. sugar industry has a positive annual direct and indirect economic impact on the U.S. economy of more than \$26.2 billion.

It's just that simple, my friends. The proposed amendment puts hardworking people in the unemployment line. There is no getting around that fact. Since Congress "reformed" the sugar program in 1996, many sugarcane and sugarbeet farmers and many workers in cane and beet processing mills have lost their livelihood. We have lost 14 beet or cane processing mills since 1993. Two beet mills have

closed just since Freedom to Farm went into effect. All these mill closures are permanent. As a result, no farmers in those regions can grow beets or cane.

Mr. Chairman, I wish I had more time to get into more of the details. But I don't. But let me be perfectly clear. This amendment is bad not just for sugar growers, but for anyone in one of the 42 states whose job directly or indirectly depends on the sugar industry.

Consider that when voting on this amendment.

I urge my colleagues to vote against this misguided and foolish amendment.

Mr. Chairman, today I rise to oppose in the strongest possible terms this amendment which would effectively kill off the U.S. sugar program. As many of my colleagues know, I represent the second largest sugar producing district in the country. And today we have heard many arguments both in support of, and in opposition to this valuable USDA program. But one of the arguments espoused by supporters of the Miller-Schumer amendment is so egregious that I cannot possibly sit back and listen while they toss around such falsehoods and misrepresentations of the hardworking people of my district.

You have heard that the current sugar program and sugar farmers are not good stewards of the environment and that the sugar companies are irresponsible when it comes to environmental protection—specifically regarding Florida's crown jewel, our Florida Everglades. Well, Mr. Chairman, these claims are patently untrue. As a supporter of the current sugar program and one of the most stalwart champions of environmental protection in this body, I think I am uniquely qualified to respond to some of the critics of this program.

American sugar farmers produce their sugar in a country with the highest environmental standards in the world. American sugar farmers comply with our government standards, at huge costs to their bottom line, and compete with farmers in countries whose governments impose little or no environmental compliance costs.

If there were no production or harvest of sugar in the U.S. we would have to import all of our domestic needs. And from where, Mr. chairman? Let me tell you. Foreign sugar is grown overwhelmingly in developing countries. Most foreign sugar is grown in countries which do not yet have the luxury of imposing environmental compliance costs on their farms and factories. Most foreign sugar is grown in countries that would have to clear rain forests or other fragile lands to increase their production to replace the sugar grown responsibly by American farmers.

Mr. Chairman, some will say that the sugar farmers are not cleaning up the Everglades. This too is false! The Everglades Forever Act of 1994 was developed cooperatively by the federal government, the State of Florida, environmental groups, and Florida farmers. Florida sugar farmers already have committed up to \$322 million to this restoration project.

The bottom line is that if you support the amendment proposed today to cripple U.S. sugar policy, you will do double damage to this nation's and the world's environment: (1) The Florida sugar industry will not be around to provide the \$322 million for Everglades restoration and preservation. And who knows what kind of development or industry would replace them? And, (2) American sugar pro-

duction will be replaced with sugar from many of the nations that provide little or no protection for the environment.

I urge my colleagues to vote against this misguided and foolish amendment.

□ 1115

Mr. MILLER of Florida. Mr. Chairman, I yield 4 minutes to the gentleman from Tennessee (Mr. WAMP).

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

Mr. WAMP. Mr. Chairman, yesterday as we were closing the debate on peanut subsidies, on that particular amendment my good friend, the gentleman from Washington (Mr. NETHERCUTT), said if I would have voted or if I did vote for the Freedom to Farm bill, that I should support these reforms. Well, I want the record to reflect that I did not vote for the Freedom to Farm bill in 1996, because I did not think that the reforms they called for went far enough, if at all, in some cases.

I want to say, too, that our agriculture friends here in this body are the nicest people in the entire House. It is incredible, from the gentleman from Hawaii (Mr. ABERCROMBIE) on this side, to the gentleman from New Mexico (Mr. SKEEN), to the gentleman from Oregon (Mr. SMITH), to the gentleman from Washington (Mr. NETHERCUTT), literally some of the most genuine wonderful people, close to the ground, and they truly represent the farmers' interest in their demeanor and in their civility.

But I really am frustrated that this new majority has reformed virtually everything in sight and come up so grossly short on reforming farm programs. Whether it is tobacco, whether it is peanuts, whether it is sugar, this is still an egregious violation of the free market and of the private sector in this country by the government.

I want to say that I will support the final agriculture appropriations bill, Mr. Chairman, but I want to support these amendments, particularly this amendment, and I want to rise today and speak for the thousands of employees in east Tennessee who love the companies they work for, are proud of their jobs, and they happen to be in the food business.

We hear about all the jobs on both sides, and I certainly would not take exception or make a dispute out of it. But let me tell you, Chattanooga Bakery makes Moon Pies. I have known those folks all my life. McKee Foods makes Little Debbie's, you probably have had one. They sell them all over this hemisphere. The first Coca-Cola bottling plant in the country, Chattanooga, Tennessee. One of the largest M&M Mars plants in the country is in my district. Planters and Life Savers are made in my district. Double Cola is made in my district, Brock & Brock Candy is made in my district.

That is thousands of good jobs, thousands of good jobs, and those people

want us to oppose these subsidies because they inflate the price and cut their own benefits in their company. As their employers can pay market price for these commodities, they get better benefits, they get higher wages, and they know it. These are good employers who treat their people well.

The fact is, as sincere as all these folks are, this is corporate welfare, pure and simple. The sugar daddies get away like bandits, and the consumers and the taxpayers pay the price. That is the truth. That is why Citizens Against Government Waste is scoring this vote, a very responsible group that takes a real fair approach to this process, they are scoring this, because they know that these farm price supports, quotas, subsidies, are costing the American taxpayer, costing the American consumer.

Good government says let us finish the job the Republicans have started and truly reform these farm programs. As these amendments come up, I want to stand in support of these amendments.

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska (Mr. BARRETT).

Mr. BARRETT of Nebraska. Mr. Chairman, here we go again. It seems like every year we have to rise and defend our American sugar producers. I think we need to realize that the sugar program is not corporate welfare. Beets and cane are grown in 17 different States in these United States. The sugar beet industry employs 23,000 people in my State alone, and generates about \$525 million in economic activity in Nebraska as well. Nationally the industry will generate \$288 million between 1996 and 2002 to help us reduce our Federal budget deficit.

I also rise once again, Mr. Chairman, to defend the House Committee on Agriculture. As the gentleman from Illinois so aptly stated, we did reform the sugar program. In 1996 the farm bill created a free domestic sugar market, it froze the support price at 1995 levels, it imposed a penalty on producers who forfeit their crops instead of repaying their marketing loans, and it increased imports, and these changes significantly impacted sugar growers. It certainly affected their bottom line.

Proponents of the amendment believe that the one cent reduction is not going to impact prices, that it would not hurt sugar producers in my particular State. The amendment would cost my producers an additional \$60 per acre. At a time when farmers are certainly hurting across this country because of low prices, it is ridiculous to inflict these additional costs, especially when they would help only a few large corporations.

The farm bill in 1996 did reform our sugar policy. It also made a major commitment, a contract with our American farmers. Let us keep that commitment.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. BONIOR).

Mr. BONIOR. Mr. Chairman, I rise in strong opposition to the Miller amendment, which abandons our commitment to provide a safety net for America's family farmers. Families who grow sugar need a safety net in case of a natural disaster such as drought or flooding, and that was the commitment that we made 7 years ago when we made the commitment in 1996 for a 7-year commitment to these farmers. Now the amendment would break that promise.

In my State alone, in Michigan, myself, the gentleman from Michigan (Mr. BARCIA) and others have about 23,000 jobs that are tied to the production of sugar; 2,800 families farm sugar beets, many in my district.

Our Nation's sugar farmers are the most efficient in the world. They should not go broke when the weather turns sour for them over one year. If this amendment passes, more American farm families will be vulnerable to the vagaries of the weather, sugar imports will rise, and the sugar will come from producers abroad who use, in many instances, child labor.

Most importantly, consumers will see no benefit. Giant multinational food and soft drink manufacturing companies will only increase their profit margins. They will not pass the savings along to the consumer. They will pocket it, and that is not fair.

Mr. Chairman, I want to thank my colleagues, particularly the gentleman from Hawaii (Mr. ABERCROMBIE) and the gentlewoman from Hawaii (Mrs. MINK), for their strong leadership on this issue. Let us keep our commitment to America's sugar farmers and their families.

I urge my colleagues, oppose this Miller amendment, save our family farms, and save our family farmers who grow sugar.

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota (Mr. GUTKNECHT).

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

Mr. GUTKNECHT. Mr. Chairman, I rise in opposition to the Miller-Schumer amendment. U.S. sugar policy is a win-win proposition. We win by reducing the debt and by protecting our farmers from unfair foreign trade.

As a member of the House Committee on the Budget, I want my colleagues to know that U.S. sugar policy has been run at no net cost since 1985. Since 1991, the U.S. sugar policy has actually been a revenue raiser for the Federal Treasury.

Former President and Member of this House John Adams said "Facts are stubborn things," and here are some very stubborn facts. The Congressional Budget Office estimates that U.S. sugar policy will generate \$288 million in revenue over the life of the farm bill. By law, every single cent of this is earmarked for debt reduction.

U.S. sugar farmers are among the most efficient in the world. Two-thirds of the world's sugar is produced at a

higher cost than that in the United States. That is why U.S. sugar farmers endorse free trade. Unfortunately, the world is far from free trade. More than 100 countries produce sugar, and every single one of them intervenes in the market to protect their producers. That is why the world sugar market fails to reflect the real cost of producing sugar.

For the past 15 years, the price of sugar on the world market has averaged only one-half the cost of the average production. When most of our trading partners do not play fair, how can we expect U.S. sugar farmers or any American farmer to unilaterally disarm? Mr. Chairman, unilateral disarmament was a stupid idea during the Cold War, and it is a stupid idea for American farmers.

Mr. Chairman, I support a win-win sugar policy. Let us defeat the Miller-Schumer amendment.

Mr. ABERCROMBIE. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. FARR).

(Mr. FARR of California asked and was given permission to revise and extend his remarks.)

Mr. FARR of California. Mr. Chairman, I rise in opposition to this cheap-sugar, put-the-farmers-out-of-business amendment.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. BARCIA).

Mr. BARCIA. Mr. Chairman, I have the privilege of representing some of the best farmers in the world. They are the ones who give consumers value for their dollar, not like the food processors, who have historically failed to pass along savings while opposing the sugar program.

The proponents of the amendment will tell you that we can buy sugar more cheaply on the world market, but they ignore certain key points. First, every other sugar-producing country in the world has a sugar program that guarantees their growers more than our growers receive. Ninety percent of their sugar is under contract. They sell the remaining 10 percent at fire-sale prices for whatever it will bring, still earning a profit with total revenues. How else can one explain a world market price that for 10 years has been only one-half of the actual average cost of producing sugar?

Secondly, every time our program has been shut down, the world price has skyrocketed to a multiple of our support price.

Finally, our sugar producers are the first to say they will end their program as soon as other sugar producing nations end their program. No other country has yet stood up to that challenge.

Mr. MILLER of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina (Mr. SANFORD).

Mr. SANFORD. Mr. Chairman, I rise in support of this amendment because I

believe it makes common sense. Ultimately I think this debate is really not about sugar, it is not about the sugar subsidy program. What it is really about is 300 years of economic theory and economic practice.

If you think about the words of, whether it is Adam Smith or Milton Friedman, if you were to boil all of those thoughts down, 300 years, you would boil them down to this, and that is to do the most good for the most people, let markets work.

Unlike so many economic theories, if you look at the last 300 years of economic practice, it has validated that. I see that daily with tomato farmers and watermelon farmers and cucumber farmers in my district who live by the markets. In fact, if you were to look at the fall of the Soviet Union, what you would see is not nuclear arms or not armies that brought it down, but markets brought it down.

So the fundamental question in this debate is do we want to let markets work? Should there be a floor price for a product? If you say yes, you are saying the opposite of what economic theory said over 300 years. If you were to say no, if you were to say there should be a floor price, then why not a floor price with computers? Or, they are striking in Detroit, why not a floor price for cars? Or why not a floor price for homes?

We do not do that because it does not make common sense and it does not do the most good for the most people. This is a case where we have a sugar subsidy program that does a lot of good for one particular family. They get \$60 million a year in personal benefit, the Fanjul family down in Palm Beach. But for the common farmer, it does not do good, and it does not do good for the consumer. Therefore, I rise in support of this amendment.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I come from Quincy, which is a city bordering the capital city of Massachusetts, Boston. We do not have farms. We are lucky that we have gardens.

My constituents are working people. Many of them are union members. They are Teamsters, they are carpenters. We cannot distinguish between beet sugar and sugar cane, but we do know something about commitments. We know something about fairness. And I understand that there was a commitment made to the small farmer here in America, to the sugar farmer. Many of them visited me during the course of the past 6 months. They have made production plans based upon that commitment. They have made family financial plans based upon that commitment.

□ 1130

They have made business plans based upon that commitment. I know my people respect commitment. They honor fairness. They also understand

that the small farmer in America is under siege by large multinational agribusiness interests.

Let us support them. The small farmer is under siege. My constituents understand that. They respect the historical role of the small farmer here in America, its unique role in this country. We support the small farmer. Defeat Miller-Schumer.

Mr. MILLER of Florida. Mr. Chairman, I yield 1 minute to the gentleman from New Hampshire (Mr. BASS).

Mr. BASS. Mr. Chairman, I rise in support of the Miller-Schumer amendment. By protecting sugar growers, the Federal Government sugar price support and quota system effectively doubles the price of sugar for U.S. consumers. The General Accounting Office estimates that the program costs America \$1.4 billion a year in higher grocery expenses.

Aside from bilking American consumers, the program also favors large corporate interests over small farmers by focusing a large portion of program benefits on a few corporate farmers. As we have heard from previous speakers, approximately 1 percent of sugar farmers reaped 42 percent of all sugar program benefits in 1991. Within the narrower sugar cane industry, 17 farms accounted for 55 percent of the benefits.

Furthermore, the program does not limit the amount of benefits each sugar producer can receive, allowing a few large farms to accumulate enormous windfalls. In 1991, 33 of the largest sugar farmers in United States each received over \$1 million in program benefits. In fact, one of these huge agribusinesses accrued \$30 million in program benefits that same year.

The Federal Government sugar program provides a narrow subsidy to an industry that does not need it. Because the program primarily benefits a few large sugar growers at the expense of all American consumers, the sugar price support system and import quota should be repealed. I urge my colleagues to support the Miller-Schumer amendment.

Mr. SKEEN. Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. FOLEY).

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

Mr. FOLEY. Mr. Chairman, let us just set the facts straight. Since the 1996 farm bill, wholesale refined sugar prices have dropped 12.1 percent, while retail refined sugar prices have increased to 1.2, ice cream, 2.4; cereal, 6.6; candy, 3.7; cookies and cakes, 3.9.

Let us dispel the fact that this is an environmental vote. The Miami Herald: "Dismantling the U.S. sugar program will not save the Everglades."

Fact two, the working 200 richest in Forbes Magazine, none of them are sugar barons. In fact, the only people mentioned are candy maker Mars and Wrigley, the chewing gum.

Finally, to get a lecture on campaign finance reform from the gentleman

from New York (Mr. SCHUMER), the sponsor of the bill, who has \$10 million in his campaign account, I think is a little bit sanctimonious.

Please defeat this amendment. It will not solve the problems. In fact, to the contrary. If Members really want to help the consumer, I would ask of the sponsors of the amendment to start pursuing the very people who are charging the consumers more for products when their supplies are costing them less.

Mr. Chairman, I include for the RECORD the following chart and the article entitled "Congress Weighs Sugar."

The material referred to is as follows:

[From the Miami Herald, July 16, 1997]

CONGRESS WEIGHS SUGAR

Granted, Florida's sugar industry is hard to live with. It has a lot of political muscle, which it flexes.

But sugar cane, the plant, is still the most benign crop grown in the Everglades Agricultural Area, requiring less water than rice and releasing fewer polluting nutrients than vegetables or cattle pastures. That's something to consider when arguing—as the U.S. House apparently intends to do in the next few days—whether to dismantle the U.S. sugar program.

Florida Republican Rep. Dan Miller, of Bradenton, and Rep. Charles Schumer, D-N.Y., are offering the amendment, which almost passed last year, to an appropriations bill.

There is, in this free-trade era, a case to be made of abolishing U.S. supports for sugar and other agricultural commodities. The programs do distort the market. That's their purpose—to protect farmers from wildly fluctuating prices and to make sure that they stay in business. The latter is of more than passing interest of other businesses, too, including banks.

Be that as it may, the Miller-Schumer amendment is something of a litmus test among environmentalists who think that all the woes of the Everglades would disappear if Florida's sugar industry disappeared. They seem to assume that land stripped of sugar cane will sprout sawgrass. It won't, and Everglades restoration is not so simple.

Studies show that the crops that might supplant sugar cane would pose greater threats of pollution and that Everglades land once farmed but allowed to lie fallow is quickly overgrown with melaleuca, Brazilian pepper, or other noxious plants posing problems more serious than sugar cane does.

Whether dismantling the U.S. sugar program will put Florida sugar growers out of business is uncertain; they are among the world's most efficient. It is certain, however, that Congress can't save the Everglades merely by dismantling sugar's supports.

Mr. ABERCROMBIE. Mr. Chairman, I yield such time as he may consume to the gentleman from Minnesota (Mr. PETERSON).

(Mr. PETERSON of Minnesota asked and was given permission to revise and extend his remarks.)

Mr. PETERSON of Minnesota. Mr. Chairman, I rise in strong opposition to the bill.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1 minute to the gentleman from North Dakota (Mr. POMEROY).

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

Mr. Chairman, I want my colleagues to focus on what this is really all about. It is not about Adam Smith and Milton Friedman. It is much more about Paul and Vanessa Kummer, family farmers near the Red River of North Dakota.

I heard the preceding speaker say this is about big corporate farming producing sugar. We do not even allow under State law corporate farming in North Dakota, but the sugar program is absolutely a vital part of our agriculture.

Our agriculture is under very severe stress, with the value of wheat dropping 33 percent, barley dropping 29 percent, and virtually all of our farmers losing money. The only thing that is lending a level of stability to North Dakota agriculture is the sugar program. If this amendment would pass, the average farmer having 100 acres of sugar beets would lose \$6,000 in a single year.

We are on our backs with North Dakota agriculture. We need help. This would absolutely kick us when we are down. Please defeat this amendment.

Mr. MILLER of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Chairman, I rise in support of the Miller-Schumer amendment, and compliment my colleague, the gentleman from Florida (Mr. MILLER) for his outstanding leadership on this issue.

The United States sugar program, as it is spelled out in this legislation, amounts to a sweet deal for the sugar producers. As was pointed out by the gentleman from New Hampshire (Mr. BASS) on the other side of the aisle, only a small percentage of American families benefit, family producers, benefit from this program. It is a raw one for refiners, consumers, and the environment.

I thought programs that we initiate here in Congress were supposed to help people. This one has managed to close 11 of 22 sugar refineries here in the United States. Three of the well-known Domino Sugar refineries have closed their doors, and I am afraid that the one that remains in my district is the next target. It employs hundreds of highly-paid industrial workers, many of them from New York's minority community. By providing price support loan programs to producers, this program is taking jobs away from the American worker at the same time it is driving up costs for the American consumer.

Domestic sugar prices are still twice as high as the world price of sugar. As long as this sugar program remains the same, so will the prices.

The Federal Reserve, the USDA, and the President's Council on Wage and Price Stability all agree on the obvious: Working families would benefit from lower sugar prices. We have a chance to repair the damage brought by this program. We have a chance to

sweeten the deal for most Americans. American consumers deserve lower prices, and American workers deserve to keep their jobs. By voting for this amendment, it is a modest one and in the right direction. Vote for Miller-Schumer.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1¼ minutes to the gentleman from California (Mr. FAZIO).

Mr. FAZIO of California. Mr. Chairman, when I came to Congress 20 years ago I had hundreds of sugar beet growers in the Sacramento Valley. Today we have far fewer. Acreage is down. We have lost a number of refineries. They are closing because there is not enough product grown anymore, because the growers cannot make a living on the current sugar price.

What we see every year when we have this debate is a fight between the processors, the candy and other sugar-consuming industries, like soft drinks, and those hardy farmers who continue to struggle to remain in businesses. This is a predatory battle, and regardless of what we do today, and I hope we defeat this amendment, it will continue to be a predatory effort to eliminate sugar growers of all types in all 17 States that grow beets or cane sugar.

What we see, unfortunately, is an effort to appeal to consumers and environmentalists. Frankly, if we continue to see dumping from overseas sugar interests we will see the end of this domestic industry, and then we will be at the mercy of people who bring their product here. And sugar prices would certainly increase. If we continue to take land out of agricultural production, it will not help preserve open space. Environmentalists are wrong if they oppose this amendment.

Mr. Chairman, the bottom line here is, for environmentalists to take up this cause and use this as a way of determining how people should vote this fall by using this issue is wrong. We want to preserve agricultural land, we want to preserve open space. We want to take care not to push farmers who farm beets on marginal land out of this industry. This is not just about Florida sugar and the everglades.

Mr. MILLER of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Chairman, I rise in support of the Miller amendment. I want to say this. We hear over and over again about the poor farmers. Forty-two percent of the sugar program's benefits go to just 1 percent of the sugar producers. Thirty-three of these people get more than \$1 million. So much for poor farmers. Or how about this poor struggling farmer, he gets \$65 million, \$65 million, to one poor little farmer out there.

Mr. Chairman, this is a government-sanctioned cartel. We hear that it does not cost consumers. Listen very carefully when they say that, because the fine print says it costs you, it is just not a direct tax. It costs \$1 billion more at the cash register when Ameri-

cans go to buy products that have sugar in them.

The sugar program was to be reformed in the farm bill. I was here before the farm bill. I was here during the farm bill. I worked for sugar reform. I come from an area where there were reforms on cotton and on peanuts and other commodities, but I can say this, sugar was not reformed. I was there at the time. I served in Congress.

I can say this, since we are talking about a face. Savannah Foods and Industry 2 years ago invited me to their 80-year anniversary. It is a great company in Savannah, Georgia, that refines sugar. They invited me to their 80-year anniversary 2 years ago. Last year they did not.

Why? Because they went out of business. They had to sell because of this government-sanctioned cartel that kept sugar prices higher than what they could sell it for. Because of this government-sanctioned cartel, there are people like Robert JOHNSON, who worked for the refinery for 18 years, whose daddy worked for the sugar refinery, who is part of the Savannah great economy, and Mr. JOHNSON is not sure he is going to have a job. It is now owned by what was a competitor, but he does not know what tomorrow will bring, because of a government-sanctioned cartel. Vote for the Miller amendment.

Mr. ABERCROMBIE. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Chairman, I thank the gentleman for yielding me the time, and I appreciate the leadership of the gentleman from Hawaii (Mr. ABERCROMBIE) on seeing that we maintain a domestic sugar industry.

Mr. Chairman, I rise in opposition to this amendment which would further reduce the farm price for sugar. Proponents of this amendment continue to claim they are offering this in the name of "consumers".

Mr. Chairman, let us get the facts straight. There is no such thing as a world free market. No matter how many Members stand up and say it, there is not one. Right now the average world price we hear about is 9.46 cents. The average cost of producing sugar in the world is 18.04 cents. How can anyone in this country compete with the treasuries of governments in other countries?

A lot has been said about the big sugar growers. Let me speak on behalf of 300 sugar farmers in the Rio Grande valley of Texas that depend upon the sugar program. They are the most efficient in the world. If the Miller amendment should pass, they are out of business.

To those that say this concerns the consumer, how can it be in the consumer's best interest when you have wholesale refined sugar dropping by 12.1 cents since last year in the 1996 farm bill, while at the same time the retail price has gone up 1.2 percent; ice cream, 2.4 cents, cereal, 2.6 cents; candy, 3.7 cents, and cookies, 3.9? It is not the sugar growers' fault.

Since the 1996 farm bill reforms went into effect, American sugar farmers have experienced a price drop of 15%—double the drop this amendment intends.

As a result, how much have consumers benefited from this 12% drop in producer prices? To date, the answer is Zero, not a single bit. And the proponents of this amendment would have you believe a further drop in producer prices will help consumers?

What about the prices for products that contain sugar—like ice cream, cereal, candy or cookies? While sugar has been dropping, the prices for these products have been going up. The manufacturers of these products have been paying farmers 12% less for the sugar they buy, but charging retail consumers 2%–4% more for ice cream, cereal, candy and cookies.

Not even the price of sugar on the grocery store shelf has seen a similar reduction in price—in fact, the retail price in grocery stores has increased.

Vote against the Miller-Schumer amendment. It's a blatant grab of \$150 million from the pockets of struggling American sugar growers to further fatten the bottom line of already profitable multinational food and beverage manufacturing and retailing corporations.

Mr. MILLER of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. SHAW).

Mr. SHAW. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, we have heard a lot about how these wealthy families are running these particular sugar operations. I happen to be the representative of the largest sugar producer in the world, but I cannot support the continued price-fixing by this government of sugar.

If Members have sugar farmers in their district living on the land, I can understand their opposing the Miller amendment. If Members have this as a prime industry within their own State, within their own area, I can fully understand that. We do that every day in this body.

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But one thing I cannot understand is not taking into consideration the downstream effect of this price fixing by the Federal Government.

We have heard from the gentlewoman from New York about the closing of Domino Sugar. We have heard from various other Members about how it affects the working American.

The sugar industry today, as far as the farming, is highly mechanized, very highly mechanized. What we are talking about, and we have already Members saying that this is not a subsidy. Baloney, it is not a subsidy. It is a subsidy required and placed upon the consumers of this country. It is a hidden tax. It is an insidious price-fixing by the Federal Government that makes us less competitive on the goods that we produce from sugar itself.

We heard the gentleman from Texas (Mr. STENHOLM) talk about the cost of production was 18-point-some cents.

What the Miller amendment does is not do away with the total price structure; it drops it one penny, still well above the cost of production. There is still plenty of profit there.

So let us get this vote straight. This vote and this amendment is pro-consumer. The Miller amendment is pro-environmental. This is a very important environmental vote. I can tell my colleagues, just go down to my Everglades and see the effect of runoff from the sugar industry. I urge my colleagues to vote "yes" on the Miller amendment.

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the gentleman from Montana (Mr. HILL).

Mr. HILL. Mr. Chairman, I do represent a number of family farmers who are trying to make a living trying to produce sugar in Montana.

Mr. Chairman, we made a commitment to those producers in the agriculture reform measure. What we said to them was we wanted to increase the predictability and stability on the family farm, and we said that this program would increase trade and increase imports and increase competition.

That is what has happened as a consequence of the sugar program. We have done that with no cost to the Treasury. There is no corporate welfare and no subsidy. What this is really about is that the sugar consumers, who are large candy companies, what they want to do is get the benefit of the subsidy of foreign markets. There really is no free market. There is no market in sugar, at least no market that reflects the cost of production.

Our producers can compete with the producers anywhere in the world, but they cannot compete with subsidies that come from foreign markets. What this debate really is about, this debate is not about helping the average American consumer of sugar. This is about helping those large companies who want to enjoy the benefit of the subsidy of foreign governments.

Mr. ABERCROMBIE. Mr. Chairman, I yield 2 minutes to the gentlewoman from Hawaii (Mrs. MINK) who I think knows as much or more about the sugar industry and its implications than anyone in the Chamber.

(Mrs. MINK of Hawaii asked and was given permission to revise and extend her remarks.)

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentleman from Hawaii (Mr. ABERCROMBIE) for yielding to me this time.

Mr. Chairman, we have heard a lot today, but it is a mystery to me how we can reconcile the notion that when the sugar prices go down by 12 percent and the so-called consumers in the soft drink industry, candies, cakes, and cookies, their prices go up, that there is any relationship with what they are talking about in reality. Let us get real.

The 1996 farm act has caused major reform in the sugar industry. Our prices have gone down. And if someone

can believe that if our prices go down, that the other sugar consumers' prices should also go down, just look at the record. It has not. It has gone up.

So support for this Miller-Schumer amendment would be catastrophic. We have done our job in our industry. Our workers are working hard. We talk about the sugar industry or the sugar growers or somehow the producers, we get into an idea that they are robots out there with some rich farmer sitting in the breakfast room and the commodities are getting grown by themselves. Let me tell my colleagues, farmers, producers in the sugar industry are workers.

So this amendment has to do with our belief that workers, sugar workers, farm workers, are the same and they deserve the same breaks insofar as their ability to survive.

My industry in Hawaii has been devastated. We have lost about a dozen major sugar producers in the State of Hawaii. We have about three left. If this amendment should pass, one small plantation on the island of Kauai working about 286 employees will suffer a million dollar loss. It will probably throw that company out of business and the island will be devastated.

For the whole State I am told it is going to cost about \$17 million. So today the debate is about workers and about saving American jobs.

Mr. Chairman, I rise today in strong opposition to the Dan Miller-Schumer Amendment which is an attempt to break a commitment this Congress made to American Farmers just two years ago in the Farm Bill.

At that time we came to an agreement on how the commodity programs would be run for the next seven years. Reforms were made in the sugar and other programs, and in return farmers had assurances of what they could expect over the next seven years.

Now, once again just like last year, we face an amendment by Mr. DAN MILLER and Mr. SCHUMER that will undo the commitments made in the Farm bill and threaten the future of our domestic sugar industry.

This amendment which would reduce the domestic sugar price supports by \$.01 per pound threatens the survival of U.S. sugar farmers and will mean an increase of cheaper foreign sugar into the U.S. marketplace.

Don't be fooled by the argument that if the sugar price support is reduced the consumer would see the savings. This is absolutely not true. Let's look at facts:

Since the Farm Bill passed in 1996 the wholesale price of sugar has dropped by 12%, but have the consumers seen a drop in the price of candy, sodas, or ice cream—No. In fact, the retail price of ice cream has gone up by 2.4%, cereal by 2.6%, candy by 3.7% and cookies/cakes by 3.9%. The price of retail refined sugar has even gone up by 1.2%.

The price of sugar does not drive the consumer cost of products made with sugar. It is the desire for higher profits by the big soft drink, candy and confectionery conglomerates that drives consumer costs.

The Dan Miller-Schumer proponents use consumer cost as an issue to mask the primary motive, which is allow more cheap foreign sugar into the U.S. market so that the

mega food-conglomerates can make more money.

They often point to a flawed study General Accounting Office (GAO) did in 1993 and subsequent report in 1997 to promote their idea that the sugar program results in higher cost to consumers. We've heard some of the figures from the GAO report used today, like a \$1.4 billion cost to consumers.

I asked the U.S. Department of Agriculture to take a look at what GAO did in its study. In a response to my inquiry dated October 24, 1995 from Under Secretary Eugene Moos, the USDA found that the GAO used incorrect data and ignored key components of the sugar program when making their conclusions. Furthermore, the GAO study assumes that grocers and food manufacturers would pass every cent of the lower prices right along to consumers.

The USDA further found that even using the GAO's flawed methods, it could still show hundreds of millions of dollars in benefits to the consumers depending upon which years were studied.

The USDA states that had the GAO looked at the time period from 1973-75, rather than 1989-91, the analysis would have showed an annual savings to domestic users and consumers of \$350 million to \$400 million.

The USDA analysis not only points out the flaws of the GAO study, but it also reinforces the fact that the U.S. sugar growers do not receive subsidies from the federal government and that the sugar program runs at no cost to the government. In fact, U.S. sugar growers pay into the U.S. Treasury \$37 million annually through a marketing assessment.

Mr. Chair, U.S. consumers benefit from the U.S. sugar program. They benefit from the stability it ensures, and the access it provides to quality sugar produced by U.S. companies. A strong domestic sugar industry contributes to our economy by producing jobs. Currently the sugar industry accounts for over 400,000 jobs in the United States. Many of these jobs are concentrated in certain areas of the country, and account for a significant part of the economy in those regions.

In Hawaii, we have over 6,000 jobs dependent on the sugar industry. These are good jobs that pay a living wage, include health benefits, retirement and other benefits. U.S. sugar producers are providing these jobs while complying with U.S. labor and environmental law.

The demise of the U.S. sugar industry would mean the loss of these jobs to sugar producers overseas, that do not have labor or environmental protections and in documented cases use child labor to produce cheap sugar.

Are we willing to forsake our own sugar producers so that the international food cartels can buy cheap sugar produced by twelve year-olds in Brazil or Guatemala? I hope not.

A one cent reduction in the sugar price support will determine whether my sugar growers in Hawaii can make it. One company, Gay and Robinson, would lose \$1 million in a year as a result of this Miller-Schumer Amendment. As a company that is just breaking even, a \$1 million loss could mean the end of the company and the jobs that it supports on the island of Kauai which already has a 10% unemployment rate. Our industry in Hawaii could lose \$17 million.

Many of you have read recent reports of the dire state of Hawaii's economy. We are not

benefiting from the economic boom like the rest of the country. Unemployment rates are high, our tourism industry is lagging because of the downturn in the Asian markets. We have to depend on other segments of our economy such as agriculture to maintain and increase jobs.

Over the last decade Hawaii has seen the loss of many sugar companies. We now have only three companies left. They need to be able to rely on the sugar program as enacted in the 1996 Farm Bill. To amend the program will seriously undercut our economy.

Gay and Robinson has made plans, they've made improvements, they are planning for the future, hopefully to expand and add more jobs to an island that desperately needs employment opportunities. They did these things based on seven years of stability within the sugar program as promised in the Farm Bill.

We cannot go back on our word. Businesses have made decisions based on our commitment, families are depending upon employment based on the commitment we made. This is not a esoteric fight about the simple price of sugar—it is about the lives of working Americans who depend upon a domestic sugar industry for their jobs.

I urge my colleagues to reject the false consumer cost argument based on the GAO report, and vote today for a strong U.S. sugar industry that will continue to provide jobs here in America. Defeat the Dan Miller-Schumer Amendment.

Mr. MILLER of Florida. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mrs. LOWEY).

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

Mrs. LOWEY. Mr. Chairman, I rise in strong support of the Miller-Schumer amendment to reform the Federal sugar program. As my colleague from Florida just said, the sugar program is costing jobs in New York and around the country.

In Yonkers, New York, the Refined Sugar Inc. sugar refinery is hanging on by a thread because of this program. There are over 300 of my constituents' jobs at stake at Refined Sugar. And just down the road from Refined Sugar is the Domino Sugar plant in Brooklyn, which is facing the same dire consequences as a result of this program. At Domino 450 jobs are at stake.

Mr. Chairman, it is clear that this grossly outdated program should be eliminated. Our Federal agriculture policy was never intended to benefit a few privileged growers at the expense of 250 million American consumers.

It is time for each Member of Congress to decide who deserves our support, a few wealthy sugar barons or 250 million American consumers. The answer is clear, Mr. Chairman. It is time to end the sugar program.

Mr. SKEEN. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. CAMP).

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

Mr. CAMP. Mr. Chairman, I rise in opposition to the amendment.

Only 2 years ago we enacted major reforms to our sugar policy and they

have been tough reforms. Our 1996 farm bill created a free domestic sugar market. We froze the support price at 1995 levels. We required the USDA to impose a penalty on producers who forfeit their crops instead of repaying marketing loans, and sugar is the only commodity with such a penalty.

We even raised by 25 percent the amount that sugar growers pay in a special assessment for debt reduction. And we increased imports to allow the Secretary of Agriculture to bring more sugar into the United States if we do not produce enough.

These reforms have had a significant impact on our growers. Prices have gone down. Twenty-three thousand industry jobs in Michigan, and nearly 3,000 family farmers in Michigan and farm families all across the country have accepted our reforms, and they are doing the best they can under a new program.

Our sugar program works. It is at no cost to the taxpayers and puts money into the Treasury for debt reduction.

It is not fair to our growers. Let us keep our 7-year commitment, Mr. Chairman. I urge my colleagues to reject the Miller-Schumer amendment.

Mr. SKEEN. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. SMITH).

(Mr. SMITH of Michigan asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Michigan. Mr. Chairman, I rise to ask Members to vote no on this amendment, and that we keep our promises.

Mr. ABERCROMBIE. Mr. Chairman, may I inquire as to the remaining time for each of us?

The CHAIRMAN. The gentleman from Hawaii (Mr. ABERCROMBIE) has 2 minutes remaining, the gentleman from Florida (Mr. MILLER) has 4 minutes remaining, and the gentleman from New Mexico (Mr. SKEEN) has 3 minutes remaining.

Mr. ABERCROMBIE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, for our colleagues who may not be on the floor with us right now but listening to the exchange, I hope it has been informative. Over the past 25 years in elective office, I have followed a rule: Where we make a contract, a legislative agreement, that we follow it.

Mr. Chairman, we made an agreement for 7 years and we compromised. I did not want to have some of the provisions that we voted for with the sugar bill previously. It has been mentioned by other speakers, and it bears repeating as we close this debate, we had an overwhelming vote on this bill. An overwhelming majority decided that we were coming to an honorable compromise.

To jeopardize it now by raising the issue once again on this one-cent change makes a devastating impact on those who depended on us keeping our word. A 7-year commitment is not very long when it comes to agriculture,

when it comes to making banking decisions.

When we talk about special interests, Mr. Speaker, I can tell my colleagues I do represent a special interest, the special interest of people living in Hawaii, in housing that they could not afford if they were not able to keep the jobs they have right now. We are standing up for those who are the field workers, for the farmers and producers. If we keep our word to them, then I think we can hold our heads high as legislators.

Mr. Chairman, we are fighting against wage slavery in the rest of the world. How is it possible for us to say that we can compete in a market in which we have child labor producing sugar, when we have oligarchs in other countries producing sugar and dumping sugar in our market? That is not the kind of thing we would be very proud of as a legacy to the children of our country, to say that we violated labor standards, health standards, environmental standards, all because we wanted to have cheap manufacture of sugar.

Mr. Chairman, I ask in conclusion, please, let us keep our word as legislators. Let us stick to the contract that we wrote with one another. It is working and it is working for America.

Mr. SKEEN. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana (Mr. BAKER).

Mr. BAKER. Mr. Chairman, I thank the gentleman from New Mexico (Mr. SKEEN) for yielding me this time.

Mr. Chairman, on the family farm a man's word has sealed many a deal. Among working people, a handshake has led to an agreement. In corporate America, they sign on the bottom line and that leads to an understanding. In our judicial system, signing on the bottom line with witnesses is an enforceable contract.

Only in the United States Congress, where we vote in the light of day, in front of the witnesses of the press, before our constituents, where we promulgate the action of this body into the law of the land and print it officially for all to read, is a deal not a deal.

The working men and women who struggle in the heat back home trying to raise a crop to feed their families, I can tell my colleagues, do not look at this as corporate welfare. If any of my colleagues have a doubt, I invite them down. We will put them on a nice tractor with a big comfortable seat. We will let them sit there for 12 hours in the 98-degree heat of summer in south Louisiana. And at the end of the day when they get off that tractor, I hope without help, we will talk about welfare reform. They may have discovered a new concept. If it looks like this, we want it.

Mr. MILLER of Florida. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, my amendment is a modest change in the sugar program. A one-penny change in the sugar program. Less than 5 percent in the cost of

sugar. In 1996, when we passed the historic Freedom to Farm bill, I offered an amendment to phase out the program. I think we should get rid of the program. But some of the Members, my colleagues, said, "Dan, we do not want to get too dramatic and do too much."

That is why I have come back with a very modest change of one penny on the price of sugar, and we are still over twice the world price even with the penny.

Some Members have talked about a dump price, that we do not have fair competition in the world. I believe we should have fair competition. I think it is wrong when countries subsidize their products. And there are countries, for example France, they subsidize sugar. But there are laws on the books. The Secretary of Agriculture has the power to keep that sugar out of this country. That is right and I fully support that.

But there are many countries that have a free market of sugar. The two largest exporters of sugar, Australia and Brazil, they have increased sugar production by 60 percent, selling on the world market. There is a free market for sugar and our farmers can compete for sugar, just like they do in wheat and corn, and we export the product.

Why are we protecting one industry? Sugar is a relatively small part of the total agricultural production of this country. It is less than 2 percent for sugar and peanuts alone.

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Now, why should my colleagues support this amendment? First of all, this is the sugar daddy of corporate welfare. So for conservatives, it is a big government program that no longer makes any sense. In our free enterprise system, it should go.

That is the reason organizations like Citizens for a Sound Economy, Citizens Against Government Waste, they are going to rate this vote. This is going to be rated by many organizations. Taxpayers for Common Sense, Americans for Tax Reform, are all supporting this amendment.

With respect to the environment, this is a major environmental vote because of the impact sugar has had, and they are not willing to step up to the plate and pay their fair share of the cost of restoration of the Everglades. That is the reason it is going to be a rated vote. The Everglades Trust, the National Audubon Society, the World Wildlife Fund, the Florida Audubon Society, the League of Conservation Voters, are all rating this vote and saying vote for the Miller-Schumer amendment.

We talk about jobs. Organized labor is even supporting this amendment because it is union jobs that are disappearing from the refineries around this country. Whether it is in Baltimore or New York City, we are losing jobs, whether it is the manufacturing jobs down in Georgia where they cannot make candy canes compete because sugar is so expensive.

And ultimately it is the American consumer who is the American taxpayer. We are saying this is a no net cost. In fact, the Federal Government makes a little bit of money on the program, but not really. Because the government is a major purchaser of food products, whether it is the VA hospitals or the military or programs, CBO says it is a \$90-million-a-year cost to the Federal Government just in their operations because of the sugar program.

But it is the American consumer who is the one that pays the most. CBO, other economic studies, all show the cost is over a billion dollars a year. In fact, it is \$1.4 billion by CBO.

If we want to help the American consumers, if we want to help the environment, if we want to help jobs in this country and if Members believe the government is too big and we need to get rid of these big government programs that try to run everything out of Washington, this is an amendment to support.

I urge my colleagues to support this amendment.

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. LATHAM).

Mr. LATHAM. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, here they come again, the Members who hate production agriculture, who do not believe that farmers out in the country doing the real work, trying to provide for their families, deserve a chance. Anything to get cheap food. Do not worry about where it comes from or who has to lose their farm, their lifelong occupation, because of the will of the Members who want to put them out of business and think that food only comes from the grocery store.

Members might wonder why a guy from Iowa cares about the sugar program. I will tell my colleagues. It has a dramatic impact on what happens in the Midwest with the price of corn.

We have an example here. The price of corn sweetener, which is in competition with sugar, has been down over 50 percent. Has it had any effect as far as consumer prices? Yes. The carbonated soft drink cost has actually gone up, almost a percent. Anyone who thinks that there is going to be a benefit to the consumer simply is not looking at what are the facts of the situation.

What a lot of these folks would like to see happen is to have the price of sugar go down, put American production out, the sugar producer, the farmer, put him out of business, import a bunch of cheap sugar substitute for corn fructose in the soft drinks. That will cost an already depressed Midwest corn producer at least 25 cents a bushel. And at the low level of corn prices today, that would be devastating.

So Members can listen to the crowd that does not care about agriculture, does not care about families out there working. Members can listen to them

and they can listen to reason and we can keep our promise that we made to agriculture in 1996.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. MILLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MILLER of Florida. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 482, further proceedings on the amendment offered by the gentleman from Florida (Mr. MILLER) will be postponed.

The point of order of no quorum is considered withdrawn.

AMENDMENT OFFERED BY MR. ROYCE

Mr. ROYCE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROYCE:

Add before the short title the following new section:

SEC. ____ None of the funds appropriated or otherwise made available by this Act may be used to carry out section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623) or to pay the salaries and expenses of personnel who carry out a market access program under such section.

Mr. ROYCE. Mr. Chairman, I would first like to commend my colleagues on the Committee on Agriculture and the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies of the Committee on Appropriations. They have done excellent work over the past few years in reducing harmful government interference in American agriculture and putting it on the road back to the market system that works so well.

American farmers are now unshackled and free to produce as they see fit, and American consumers are benefiting from increased production. And American consumers are benefiting from lower prices. That has been one of the most significant achievements of Congress.

However, more work needs to be done. This amendment will prevent money in this bill from being spent on the Market Access Program known as MAP. This program provides \$90 million in taxpayer subsidies per year to agribusinesses to support their international advertising. This is a relic from our former government-heavy agriculture system.

I have offered this amendment to eliminate one of what I consider the more egregious corporate welfare programs, with the hope that a trend will develop which would further rid the private sector of an intrusive government.

The Federal Government first began financing corporate advertising in 1985 with the Targeted Export Assistance or TEA. It was established to encourage commercial export markets for U.S. farm products at the time, and then,

after a critical audit of the General Accounting Office, it was changed to the Market Promotion Program or MPP. Then after another critical audit, it was changed to the Market Access Program or MAP in 1996.

The names may have changed after every critical audit, but the program has not. Not unlike most good-intentioned Federal programs, Federal funding of advertising turned out to be just another government handout. I do not believe that working men and women should continue to foot the bill for advertising subsidies to multinational corporations. Promotional advertising for products is simply not the role of government. It is the role of those private concerns that benefit from the sale of those products.

In the past we have heard that agriculture is one of the most important businesses in America and that is true. No doubt we will hear this again as we debate this amendment. But the question is not whether agriculture and American farmers are important. Without question, they are. The question is whether MAP is a proper use of taxpayer money. It is not proper, and it is not effective.

The future and continued performance of American agriculture is not contingent upon handing out taxpayers' money for advertising. The success of American agriculture results from the energy and ingenuity of American farmers.

Department of Agriculture studies will no doubt be cited which seem to show that MAP creates jobs and expands the economy by generating several dollars in revenue for each subsidy dollar handed out. These studies are based on inherently flawed methodology. They attribute employment created and exports generated in agriculture to MAP's existence, and this is too good to be true, frankly. What is not taken into consideration is that our economy is strong. It is near full employment. These jobs and exports would have been created anyway. In other words, the rooster is taking credit for the sunrise.

The USDA studies also assume that MAP-funded advertising works. Well, the department has no way to verify either assumption. In fact, a General Accounting Office report found there is no clear relationship, says the GAO, between the amounts spent on government export promotion and changes in the level of U.S. exports.

In a separate report, the GAO questioned whether funds are actually supporting additional promotional activities or if they are simply replacing private industry funds for advertising.

What is obvious on its face is that money handed out by government bureaucrats does not magically multiply through some system of multiplicity. Sure, recipients of MAP will sing its praises; most people that receive free money always will.

I urge support of this amendment.

Mr. SKEEN. Mr. Chairman, I ask unanimous consent that all debate on

this amendment and all amendments thereto close in 20 minutes, and that the time be equally divided.

I yield 5 minutes of my time to the gentlewoman from Ohio (Ms. KAPTUR), and I ask unanimous consent that she control the time.

The CHAIRMAN pro tempore (Mr. BLUNT). Is there objection to the request of the gentleman from New Mexico?

Mr. SANDERS. Reserving the right to object, Mr. Chairman, is that just on this amendment?

I yield to the gentleman from New Mexico (Mr. SKEEN).

Mr. SKEEN. Mr. Chairman, just on this amendment.

Mr. SANDERS. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

The CHAIRMAN pro tempore. The gentleman from California (Mr. ROYCE) will control 10 minutes, and the gentleman from New Mexico (Mr. SKEEN) and the gentlewoman from Ohio (Ms. KAPTUR), each will control 5 minutes.

The Chair recognizes the gentleman from New Mexico (Mr. SKEEN).

Mr. SKEEN. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. EWING).

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

Mr. EWING. Mr. Chairman, the amendment to eliminate the MAP program, I think many of us would like to see these programs eliminated. But the problem is for American agriculture that we have to compete worldwide. U.S. agriculture exported exports in excess of \$55 billion in 1998, resulting in a trade surplus of \$25 billion which generated over \$100 billion in related economic activity.

One thing that helps us achieve this laudable goal is MAP, the Market Access Program. I just returned from the ministerial meeting of the WTO in Geneva, and I can tell my colleagues, we have problems with the EU, the European Union, who heavily subsidizes their exports. And probably our biggest trade problem in agriculture is with the European Economic Union.

The one thing that they really recognize and are concerned about is our program like MAP, something that helps us get the attention of customers around the world for agricultural products. If we eliminate it at this time, it is like disarming while your adversaries continue to arm. This is minuscule compared to what is spent by the European Community to promote their exports. We need to keep this program until the European Community, until the negotiators of the World Trade Organization can bring other countries to the table and eliminate their subsidies.

I suggest that this is a good no vote for agriculture.

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume.

I rise in opposition to this amendment. If we think back to the reforms we have made in our farm programs, trade is at the center, international trade is at the center of trying to prepare and improve our programs for the 21st century.

If we look at the trade ledger for our country today, the only positive parts of the account exist in the areas of agriculture largely. Over a third of our domestic production is exported and, in fact, we have been experiencing a record trade surplus just in agriculture of over \$30 billion annually while the rest of the budget and trade ledger is in serious deficit at historic levels.

So something in what we are doing is working, and the Market Access Program is an important piece of this puzzle.

If Members look at who we are in competition with, it is U.S. farmers, individual farm families, individual producers against the European Union, against Asian production.

□ 1215

It is very important that we help these farmers move their product into the international marketplace. This program is targeted to smaller producers and to farmers' cooperatives. It is not helping the big companies.

In fact, if you look at the amount of money in the program, \$90 million, it does not even come close to what the European Union is currently spending, over \$500 million, half a billion dollars, in trying to promote their products in the international marketplace.

These exports just in agriculture represent well over a million jobs in our country. Quite frankly, unless you have dealt in the international market, you really do not understand how subsidized a lot of our competitors' production actually is. Certainly their advertising programs are. So I would rise in strong opposition to this amendment.

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

Mr. SKEEN. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. SOLOMON).

Mr. SOLOMON. Mr. Chairman, I thank the gentleman for the time. It never ceases to amaze me around here. Everybody seems to want to put the farmers out of business, especially small farmers. The Market Access Program is so vital to, just take one part of the agriculture industry, the apple growers in America, particularly in the Hudson Valley.

We are up there, and the temperatures drop down to 30 or 40 below zero. It is tough enough to make a living as it is. But this Market Access Program has provided vital, vital help to these small farmers, to export our apples into Europe, into Israel and different places.

The European Union does everything they can to stop everything from going in there. This at least gives us a little bit of an advantage. It is like promot-

ing tourism in America. It is necessary. Promoting this kind of a program is so vital to the small dairy farmers in America.

Please defeat this probably well-intentioned amendment by a well-intentioned Member, but it is a bad amendment. Vote no.

Ms. KAPTUR. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, let us summarize why this amendment should be strongly opposed. Why MAP? Why a Market Access Program? It is to help meet foreign competition.

The European Union and other foreign competitors continue to enjoy a 10-to-1 advantage over the U.S. in terms of export subsidies. The European Union and other foreign competitors are moving aggressively in providing other forms of assistance to maintain and expand their share of the world market at the expense of U.S. farmers and ranchers.

The naivete of Members of this body who believe that somehow, some way, unilaterally disarming our farmers is going to allow them to compete in an international marketplace that is controlled by other governments continues to amaze me. Member after Member has stood this morning and offered just that kind of amendment.

Without U.S. policies and programs to help counter such subsidized competition, American farmers and ranchers will continue to be at a substantial disadvantage. In contrast to the high subsidies in Europe, the 1996 farm bill reduced income support to producers in this country over 7 years, making farm income and the economic well-being of American agriculture even more dependent on continued access to foreign markets. Now we hear again an effort to take away the remaining tools.

The MAP represents a successful public-private partnership. MAP is specifically targeted to help small businesses, farm cooperatives, and trade associations meet subsidized competition.

Market Access Program is administered on a cost-share basis by the U.S. Department of Agriculture with farmers, ranchers, and other participants required to contribute up to 50 percent toward the programs cost.

Every \$1 invested by United States taxpayers has resulted in \$16 in additional U.S. agricultural exports, according to the United States Department of Agriculture.

MAP helps boost U.S. agriculture exports and meet foreign competition. Also, let me say, we have reform. We have listened to the valid criticisms of the MAP program. We are now providing for cost share, direct assistance to small businesses, farm cooperatives, and trade associations. This is what this body has told us to do. This is what the Committee on Agriculture has striven to do.

Funds are to be used only to promote American-grown and produced agriculture commodities and related products. There is a prohibition on assistance to foreign firms and products. There is ongoing review and certification of use of funds and program graduation.

When you have a successful program working we stop subsidizing, and we say go forward in the marketplace, but we continue to attempt to meet foreign competition.

In conclusion, I strongly urge that this amendment be rejected. I hope that the committee, and when we get to conference, will find additional monies in this particular area. As a Nation, we can work to export our products or we can export our jobs.

This amendment, if it passed, will be an export of United States jobs, make no mistake about it. USDA's export programs are a key part of an overall trade strategy that is pro-growth, pro-trade and pro-job. This amendment is anti- all of the above.

Mr. SKEEN. Mr. Chairman, I yield 1 minute to the gentleman from Iowa (Mr. LATHAM).

Mr. LATHAM. Mr. Chairman, I thank the gentleman very much for the opportunity to speak against this very ill-advised amendment, which would have a tremendous detrimental effect, not only on the farm family in Iowa, but across this country, but also on our balance of trade situation.

Agriculture exports about \$55 billion. For each \$1 billion, there are about 20,000 American jobs. It is extremely important to maintain this program so that we can compete in the world market. We have got to also understand that this program is on a 50/50 basis with the producer out there who is paying half of the cost. The corn growers, the Soybean Association, the pork producers, the beef folks, the cattlemen pay their share to make sure that they have the opportunity to promote their American product overseas and to make sure that the jobs stay here in the United States rather than have our foreign competitors take away our jobs.

This is extremely important to continue this very, very valuable program. I would certainly urge a strong no vote to this ill-advised amendment.

The CHAIRMAN. The gentleman from California (Mr. ROYCE) has 10 minutes remaining. The gentleman from New Mexico (Mr. SKEEN) has 1 minute remaining. The gentleman from New Mexico has the right to close.

Mr. ROYCE. Mr. Chairman, I yield 1½ minutes to the gentleman from New Hampshire (Mr. BASS).

Mr. BASS. Mr. Chairman, I rise in strong support of the pending amendment. Corporate welfare. Everyone hates corporate welfare. We all talk about it in our districts. Irate taxpayers bristle at the thought of their hard-earned wages being given to large and profitable companies, and justifiably so.

It is one thing to provide temporary welfare assistance to help poor people, the people in need, get back on their feet, but to give billions of dollars in subsidies to large cooperations is absolutely absurd.

Of all the corporate subsidy programs maintained by the Federal Government, the Market Access Program is one of the most notorious.

Since its creation back in 1985, the Market Access Program has provided almost \$1.5 billion to some of the biggest and wealthiest corporations in this country. For example, in 1997, fiscal year 1997, they doled out \$2.6 million to Sunkist, \$1.4 million to Blue Diamond, \$700,000 to Welch's Foods, and \$600,000 to Ernest and Julio Gallo.

Other companies that have received market access funds include McDonald's to sell Chicken McNuggets, Joseph Seagram and Sons to promote Four Roses Whiskey.

Mr. Chairman, the bottom line that many of the firms that have received Market Access Program funds, including Burger King, CAMPBELL Soup, General Mills, Hershey Foods, Ocean Spray Cranberries, Quaker Oats, Tyson Foods, can afford to pay for their own advertising. They do not need the U.S. Government acting as their ad agency.

I urge my colleagues to support this great amendment.

Mr. ROYCE. Mr. Chairman, I yield myself such time as I may consume.

An argument has been made that we were being out-subsidized by the European Union and other countries throughout the world. I might point out that our economy is outperforming those countries by every measure.

Our per capita gross national product dwarfs most every other country in the world. We have the most productive workers. Our per capita income is highest. Unemployment is almost nonexistent.

I for one do not wish to follow the European model. We should continue striving to shed those vestiges of central planning instead of defending those that had crept into our economy in the past.

Government has no business deciding which companies are worthy of advertising funds. It is the government that must make this decision; in this case, which company gets the funds. That is, frankly, precisely what the free market is there to do, to allocate resources in the most efficient way possible.

The government ought not to be taking tax monies from companies to finance the advertising of their competition, which is the direct result of redistribution.

The main point is really whether private companies should pay for the promotion of their own products or whether the American taxpayer should be forced to pay. We do not force the American taxpayer to pay for other corporate expenses. We do not force them to pay for furniture or office supplies. In this case, we are having them pay for the advertising budget. Why

should they be forced to pay for this cost of doing business?

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

Mr. SKEEN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I regret that this amendment was presented to us just a few minutes ago because there are a lot of Members whose constituents strongly support this program but who may not be able to speak because of the lack of notice.

Mr. Chairman, this amendment is as bad in its purpose as it is in its timing, and I strongly urge my colleagues to vote no.

Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. SMITH) to close.

Mr. SMITH of Oregon. Mr. Chairman, let us get back to reality here and directness. The numbers used by these people who attempt to overnight the Market Access Program are 10 years old.

I have just returned from the European Union, Germany, France, Belgium; and let me tell you that if you do not think we are out-subsidized, you should have been with me. There was \$45 billion by the European Union, by the way, for agriculture products, \$8 billion for export subsidies to European farmers. We are asking here for a very small Market Access Program that helps us advertise our products in foreign countries where we are being outbid every day by the governments.

This idea that these are large corporations is ridiculous. That is in the past. These are small corporations. They are cooperatives such as Sunkist, but these are made up of small operators and small farmers.

Let us not reduce ourselves to the argument that this is a big government payoff. It is a 16-to-1 return of dollars. One dollar for every \$16 we receive; \$1 invested, we receive \$16 back.

Mr. FAZIO of California. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Oregon. I yield to the gentleman from California.

Mr. FAZIO of California. I want to associate myself with the gentleman's remarks and point out that 417 of the 564 companies participating in this program are small businesses by SBA definition.

Mr. Chairman, there is probably no more important tool for export promotion than MAP throughout the U.S. and particularly in California.

MAP was funded at \$200 million as recently as 5 years ago, and was authorized at one time for \$350 million.

I believe those levels of support were recognition of the importance of market promotion to the American economy.

Now MAP is down to a bare-bones \$90 million.

MAP funds go to small companies—FAS says that 417 of the 564 companies participating in MAP qualify as "small" by the SBA definition.

MAP has completely eliminated any brand-ed product promotion by large companies.

MAP funds don't just substitute for marketing efforts the company would have undertaken anyway—in fact, it is a requirement of the program that every dollar has to be matched by the company's own funds as well.

MAP is important to the economy:

Agriculture exports are at approximately \$60 billion (FY '96)—an increase of some \$19 billion or close to 50 percent since 1990.

In an average week this past year, U.S. producers, processors and exporters shipped more than \$1.1 billion worth of food and farm products to foreign markets, compared with about \$775 million per week at the start of this decade.

The most recent agricultural trade surplus (FY '96) indicates a new record of \$27.4 billion.

In the most recent comparisons among 11 major industries, agriculture ranked No. 1 as the leading positive contributor to the U.S. merchandise trade balance.

As domestic farm supports are reduced, export markets become even more critical for the economic well-being of our farmers and rural communities, let alone the suburban and urban areas that depend upon the employment generated from increased trade.

Agriculture exports strengthen farm income.

Agriculture exports provide jobs for nearly a million Americans.

Agriculture exports generate nearly \$100 billion in related economic activity.

MAP is critical to U.S. agriculture's ability to develop, maintain and expand export markets in the new post-GATT environment, and MAP is a proven success.

In California, MAP has been tremendously successful in helping promote exports of California citrus, raisins, walnuts, prunes, almonds, peaches and other specialty crops.

We have to remember that an increase in agriculture exports means jobs: a 10% increase in agricultural exports creates over 13,000 new jobs in agriculture and related industries like manufacturing, processing, marketing and distribution.

Where do those increased ag exports come from?

For every \$1 we invest in MAP, we reap a \$16 return in additional agriculture exports.

In short, the Market Promotion Program is a program that performs for American taxpayers.

Mr. SMITH of Oregon. Mr. Chairman, I urge Members to vote no on this amendment.

Mr. HERGER. Mr. Chairman, the market access program, or MAP, provides a valuable service, not only to American farmers, but to the entire American economy.

Currently, MAP yields returns of \$2 to \$7 to the American economy for every dollar of MAP funds spent overseas. The program is aimed at increasing American exports and jobs by helping maintain, develop, and expand U.S. agriculture export markets. In doing this, MAP requires all funds to be used to promote only American grown and produced commodities and related products.

MAP does not fund large multinational corporations, such as McDonalds. Instead, this program, by law, excludes foreign, for-profit companies and focuses on American small businesses. The only for-profit companies allowed to receive MAP funds are small businesses, nonprofit industry organizations, and private firms not represented by an industry group.

Even then, MAP is not a straight handout, but is a valuable cost-share program, where participants are required to contribute toward total program costs from 10 percent for generic products to up to 50 percent or more for brand name products.

MAP was established under the 1990 Farm Act to target primarily value-added products. With traditional commodity support programs being phased out through 2002, MAP will be used as an important tool to increase export markets and help stabilize commodity prices.

MAP is a proven success. Since 1986, when MAP's predecessor, the targeted Export Assistance Program, was first authorized, U.S. agricultural exports have doubled. In 1997 exports amounted to \$57.3 billion, resulting in a \$22 million agricultural trade surplus, and providing jobs for approximately 1 million Americans.

MAP's success has occurred in spite of increased international competition. Other organizations, such as the European Union, or EU, have aggressively outspent the United States in promoting agricultural commodities. In 1997, the EU budgeted \$7.2 billion for export subsidies. The EU and other foreign competitors also spent nearly \$500 million on market promotion. However, through promotional campaigns funded in part by MAP, American agriculture can be immensely successful in foreign markets.

Mr. Chairman, this program works and it works well. It is targeted at assisting American small businesses to gain fair access to foreign markets.

Mr. Chairman, I encourage my colleagues to vote for American jobs, to vote for American small businesses, and to vote for support of the Market Access Program.

Mr. FARR of California. Mr. Speaker, MAP HELPS BOOST U.S. AGRICULTURE EXPORTS. U.S. agriculture exports expected to exceed \$60 billion. Last year exports amounted to \$57.3 billion, resulting in a positive \$22 billion agricultural trade surplus, result in a record trade surplus of \$30 billion, and generate over \$100 billion in related economic activity.

MAP HELPS PROVIDE NEEDED JOBS THROUGHOUT THE U.S. ECONOMY. Over one million Americans have jobs which depend on U.S. agriculture exports. Every billion dollars in U.S. agriculture exports creates as many as 20,000 new jobs.

MAP HELPS MEET SUBSIDIZED FOREIGN COMPETITION. The EU spends more on wine promotion than U.S. spends for all commodities combined. European Union (EU) and other foreign competitors continue to enjoy a 10 to 1 advantage over the U.S. in terms of export subsidies. EU and other foreign competitors are moving aggressively in providing other forms of assistance to maintain and expand their share of the world market at the expense of U.S. farmers and ranchers. Without U.S. policies and programs to help counter such subsidized competition, American farmers and ranchers will be at a substantial disadvantage.

MAP REPRESENTS A SUCCESSFUL PUBLIC-PRIVATE PARTNERSHIP. MAP is specifically targeted to help small businesses, farmer cooperatives and trade associations meet subsidized foreign competition. MAP is administered on a cost-share basis by the U.S. Department of Agriculture with farmers, ranchers and other participants required to

contribute up to 50% toward the program's cost. Every \$1 invested has resulted in \$16 in additional U.S. agricultural exports, according to USDA. MAP helps boost U.S. agriculture exports, meet foreign competition, improve U.S. balance of trade, strengthen farm income, and protect American jobs.

The U.S. must continue to have in place policies and programs which help maintain the ability of American agriculture to compete effectively in a global marketplace still characterized by subsidized foreign competition.

This is especially true under the new Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act), which resulted in the most sweeping reforms in farm policy in over 60 years. While achieving significant budget savings, it reduces income support to producers over 7 years; eliminates acreage reduction programs; and provides increased planting flexibility. More than ever, farm income and the economic well-being of American agriculture are now dependent on continued access to foreign markets and maintaining and strengthening U.S. agricultural exports.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ROYCE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ROYCE. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 482, further proceedings on the amendment offered by the gentleman from California (Mr. ROYCE) will be postponed.

Mr. BASS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the distinguished subcommittee chairman and another Member of Congress has circulated an e-mail warning to Members that the Bass-DeFazio amendment which passed by a 229 to 193 vote majority may have cut more than we, the authors, stated.

The e-mail message claims the Bass-DeFazio amendment cut nearly \$21 million from the Wildlife Services funding which would, as the e-mail declares, put at risk "safe transportation, safe drinking water, and an abundant supply of safe and wholesome food, and, most importantly, the safety of children."

I assure my colleagues that that is not our intent. We worked with the Legislative Counsel over the past couple weeks to draft an amendment that cut only \$10 million in Wildlife Services funding for livestock protection, and we did not intend to cut health and safety funding or research funding.

□ 1230

However, because of a drafting error by Legislative Counsel, the amendment may result in an additional cut of \$10 million. It may. Not necessarily will, but it may. To clarify the amendment and reassure Members that it will only eliminate livestock protection funding, we need only to insert one word that indicates the funding should be taken from the Wildlife Services operating budget.

In a measure of good faith, I would hope that the gentleman from New

Mexico would accept our unanimous-consent request, which I have not made yet, to clarify the amendment. The House has clearly spoken on this issue. By a 36-vote margin, the House is on record as opposing animal control subsidies for ranchers. I hope the chairman would not use a typographical error by Legislative Counsel to stymie the will of the House.

REQUEST FOR MODIFICATION TO AMENDMENT NO. 2 OFFERED BY MR. BASS

Mr. BASS. Mr. Chairman, I ask unanimous consent to accept an additional word "operations" to the amendment that passed the House yesterday by a vote of 229-193.

The CHAIRMAN pro tempore (Mr. BLUNT). Is there objection to the request of the gentleman from New Hampshire?

Mr. SKEEN. I object, Mr. Chairman.

The CHAIRMAN pro tempore. Objection is heard.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is unfortunate that the gentleman from New Mexico objected. What we see here is a last-ditch attempt to preserve a \$10 million subsidy to western cattle and sheep ranchers. Half a million dollars of this money flows to my own State, so I am not just out there cutting in other people's States.

Seventeen western States receive \$10 million to conduct activities on predator control to protect livestock on private property at no expense to the landowner. Clearly a large majority of the House supported that amendment and that intent. As the gentleman from New Hampshire stated, due to a drafting error by Legislative Counsel, we may have cut more and may have extended the impact beyond that subsidy in the 17 western States to private livestock and ranching interests. So we have a number of opportunities here.

The gentleman from New Hampshire attempted to insert one word, the word "operations," to make absolutely clear what the 36-vote majority of the House intended at that time. I shortly will offer another opportunity to the chairman and would urge the chairman to take it, because I have got to inform Members at this point in time, despite the potential error, the groups that had vital interest in the original vote are no longer interested in the original vote. The scoring will be on the revote. Because even if the chairman objects, the inadvertent language problem can certainly be fixed in the conference committee.

It was the clear intent of the House and a majority of this House to end this subsidy to private ranching interests while fully protecting public health and safety over a range of other issues that are conducted by APHIS out of its \$500 million budget. I am going to in a moment give the chairman one more chance, because I know the chairman believes he will prevail

and will be able to preserve the \$10 million subsidy to the private ranching interests for one more year.

Mr. BASS. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from New Hampshire.

Mr. BASS. Is it not true that either of these two suggested changes can easily be corrected in the committee of conference under technical corrections? There is no need to worry if under the unfortunate circumstance we have a revote that these corrections will not obviously be made, because it is the intent of Congress to make this change.

Mr. DEFAZIO. Mr. Chairman, I reclaim my time and thank the gentleman. There are a plethora of ways that this could be fixed. The simplest way is by the insertion of the word "operations" which the chairman objected to. I am going to propose changing a number. That is one change in one number. That would fix the problem or any potential problem. If the chairman objects there, it could still be fixed in conference or with a technical correction later. That is correct. So clearly the revote, if it occurs, will be on whether or not the Members want to provide a \$10 million subsidy to western cattle and ranching interests which I believe a clear majority stated yesterday they do not. That will be the vote that will be rated.

REQUEST FOR MODIFICATION TO AMENDMENT NO. 2 OFFERED BY MR. DEFAZIO

Mr. DEFAZIO. Mr. Chairman, I ask unanimous consent that the language of the original amendment be changed on line 2 to not more than \$28,097,000.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

In the matter inserted in the Bass amendment providing for "Limitation on Use of Funds" strike "\$18,800,000" and insert "\$28,000,000".

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. SKEEN. Mr. Chairman, I object. The CHAIRMAN pro tempore. Objection is heard.

Mrs. LINDA SMITH of Washington. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we are going to begin a colloquy talking about the tobacco issue. First of all I would like to say that every year since I have been in Congress, I have introduced an amendment, or cosponsored an amendment, to get rid of subsidy for the Risk Management Agency, the crop insurance section, and the net cost of this, of this program. Each year we have lost by a scratch. This year as we went into working on the agriculture bill, we also have another bill which is the tobacco bill coming up. As we have worked on that, none of the objections that I have had have lessened. But it appears that the leadership now has agreed that there will be no cost to taxpayers. They will eliminate all cost to tax-

payers of this particular program in the tobacco bill which the Speaker of the House will be introducing in just a few weeks. I would like to have confirmation of that.

Ms. PRYCE of Ohio. Mr. Chairman, will the gentleman yield?

Mrs. LINDA SMITH of Washington. I yield to the gentleman from Ohio.

Ms. PRYCE of Ohio. I thank the gentlewoman from Washington for yielding for the purpose of this colloquy. I recognize the gentlewoman's long-standing role in trying to solve this program funding issue which we debate each year. I would like to take this opportunity to confirm that we on the Tobacco Task Force and in leadership share her concerns and are committed to correcting this problem as part of our efforts to craft tobacco legislation later next month in a more comprehensive way.

I have to say that I myself personally feel very strongly. I have consistently voted against the subsidy as she has. I would like to see it eliminated. I will confirm that this will be a part of the tobacco legislation.

Mrs. LINDA SMITH of Washington. I thank the gentlewoman for her comments. I want to ask one question to clarify what she just said. She is saying that the tobacco legislation will eliminate any taxpayer support for this program.

Ms. PRYCE of Ohio. That is correct. Mr. HANSEN. Mr. Chairman, will the gentleman yield?

Mrs. LINDA SMITH of Washington. I yield to the gentleman from Utah.

Mr. HANSEN. I appreciate the gentlewoman yielding. As I understand it, the designee for the leadership is the gentlewoman from Ohio (Ms. PRYCE), and we appreciate the great work that we expect her to do which I am sure she will. She is very aware that myself, the gentleman from Massachusetts (Mr. MEEHAN) and the gentleman from California (Mr. WAXMAN) have a piece of legislation that we think is an excellent piece of legislation. We are not solidly in cement, but we would like some assurance from the leadership's designee that the language that we are talking about which would give protection as I see it to the small farmer who we are very concerned about would be included in any piece of legislation, whether it be an abbreviation or change of ours, or it be one that the Speaker and the task force comes up with, that we could have that assurance. I think it would make those of us on a bipartisan nature who are working on this feel much better about that if we could have that assurance at this time.

Ms. PRYCE of Ohio. If the gentleman will yield, the assurance that the gentleman is asking for is that this subsidy will not any longer be in existence as a result of the tobacco legislation, he has that assurance.

Mr. HANSEN. We do appreciate that. I would hope that the task force would work with us closely on many of the

things that are in our legislation which I notice the Speaker of the House on television the other night, I thought he was repeating our bill as he gave his rendition on television, if I may respectfully say that.

Mr. FAZIO of California. Mr. Chairman, will the gentlewoman yield?

Mrs. LINDA SMITH of Washington. I yield to the gentleman from California.

Mr. FAZIO of California. If I could ask the gentlewoman from Ohio to comment further, it has been the assumption that a number of us who have been working on tobacco legislation have had that somehow this would be paid out of the settlement, so that the individual tobacco farmer would not be eliminated from a program that all other farmers could participate in, but that we would relieve the burden that I know a number of Members have had of public support through the general fund of the Government.

Is it contemplated that somehow the companies through the settlement would make available funds to ensure that these growers can participate in this program?

Ms. PRYCE of Ohio. That still is a very viable possibility. We will be working through the next 2 weeks of recess to further that goal. I cannot say exactly that that is how it will happen, but I can say with great assurance that it will no longer be a burden on the American taxpayer.

Mr. FAZIO of California. There may be another approach taken, if the gentlewoman will yield further, that I have not mentioned but still a way in which these growers would not be discriminated against vis-a-vis other agricultural producers?

Ms. PRYCE of Ohio. That is being explored. There are several different proposals on the table. I am sure the gentleman is aware that there are many Members on our side of the aisle that are very interested in this as well. I have been trying to work with them so that these small farmers are not cast out overnight. But it does not belong on the taxpayers' shoulders. I feel the same as the gentlewoman from Washington in that respect.

Mr. FAZIO of California. Mr. Chairman, we look forward to seeing the legislation. Obviously I hope it is a comprehensive approach to the solution to this problem but one that does not leave out the needs of legitimate tobacco farmers in this country.

Mrs. LINDA SMITH of Washington. Mr. Chairman, in conclusion I want to thank the gentlewoman from Ohio for her leadership and the assurance that the taxpayers will no longer pay this, and I will pull my amendment.

AMENDMENT OFFERED BY MR. COBURN

Mr. COBURN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COBURN:

At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 739. None of the funds made available in this Act may be used by the Food and

Drug Administration for the testing, development, or approval (including approval of production, manufacturing, or distribution) of any drug for the chemical inducement of abortion.

Mrs. LOWEY. Mr. Chairman, I reserve a point of order on the gentleman's amendment.

The CHAIRMAN. The gentlewoman from New York reserves a point of order.

Mr. COBURN. Mr. Chairman, this is a bill that is intended to do a very discrete function. Number one, we should look at what the definition of the charge to the Food and Drug Administration is. Let me quote from page 96 of this bill:

"The programs of the Food and Drug Administration are designed to achieve a single overall objective, consumer protection."

Mr. Chairman, it is my contention that there is nothing associated with consumer protection in the development and securing of abortifacient drugs, that in fact this is an area far outside the charge of the Food and Drug Administration.

What does this bill not do? This bill has no effect on the development of any drug which has a purpose other than abortifacient of an implanted blastocyst. This amendment will not prohibit the FDA from conducting its legitimate oversight function, and following its guidelines to in fact follow the charge of consumer protection.

Part of the point of order that I am sure will be raised is that this is far reaching and goes outside the scope, which it does not, because it is not intended to completely block research on efficacious drugs.

The other point that I would make, that the charge of the FDA is, is to maintain surveillance over food, drugs, medical devices and electronic products to ensure that they are safe, effective and honestly labeled. The use of abortifacients supported by our tax dollars, researched by our tax dollars, approved by our tax dollars, has nothing to do with the charge of the FDA. It would seem to me that if we wanted to be honest, that this is something that totally should be ignored, is not an area of safe and effective oversight of the FDA, and, in fact, raises several other troubling questions:

Number one is we should be seeking, regardless of our position on pro-life or pro-choice, alternatives to abortion rather than making abortion easier.

Number two, we markedly oversimplify the concept of abortifacient drugs by saying that we can have a pill that will solve this problem.

□ 1245

Number 3, there is significant scientific evidence today that abortion is associated with a marked increase in the incidence of breast cancer.

Number 4, abortion drugs are often dispensed without a doctor's approval and oftentimes endanger a woman's health rather than protect her health.

Twelve States already give pharmacists the authority to dispense these drugs without the aid of a physician.

Finally, if we talk about the research that has been done on the abortifacient drugs that are presently available or used in that manner, what we find is they are extremely ineffective. If my colleagues look at the studies that have been done in Brazil or in Europe on the multitude of drugs that are followed by this concept, what they will find is that 8 to 10 percent failure rate to accomplish what they were intended to do. What we find also is what has happened to the children that have been exposed to these drugs, and again let me bring this back.

What is the charge of the FDA? The charge of the Food and Drug Administration is safety, is consumer protection. Having Federal dollars spent to perfect and introduce and license and hold up a drug that takes away life goes completely opposite of the charge of the Food and Drug Administration.

Finally I would like to describe for my colleagues what happens to children who have been exposed to this. About 12 percent of the women who are exposed to the abortifacients that are out there now end up having to have an instrumented procedure. So, first of all, it fails for those 12 percent. Another 12 percent of the women do not abort. Of those 12 percent of women who do not abort, 9 percent, 8 to 9 percent, of the children are born.

The CHAIRMAN. The time of the gentleman from Oklahoma (Mr. COBURN) has expired.

(By unanimous consent, Mr. COBURN was allowed to proceed for 1 additional minute.)

Mr. COBURN. Mr. Chairman, of the 8 to 9 percent of the children that are born, 50 percent of those children, a large number, have microcephaly, which is a smaller-than-normal brain which leads to severe retardation, a large number have hydrocephaly, which means they have an inability to circulate the fluid around the brain.

So if, in fact, we want the Food and Drug Administration to be about consumer protection, then we in fact ought to ask them not to have anything to do in their charge with abortifacient drugs.

Mrs. LOWEY. Mr. Chairman, will the gentleman yield for the purpose of a question?

The CHAIRMAN. The time of the gentleman from Oklahoma (Mr. COBURN) has again expired.

(By unanimous consent, Mr. COBURN was allowed to proceed for 2 additional minutes.)

Mr. COBURN. Mr. Chairman, I yield to the gentlewoman from New York.

Mrs. LOWEY. Mr. Chairman, does the gentleman's amendment mean that if the application is submitted to FDA without the term, without the term "chemical inducement of abortion" as its stated purpose, would the amendment apply?

Mr. COBURN. The amendment would not apply to any drug that is applied to

the FDA that the primary purpose is not intended to be an abortifacient. For example, there is a drug that is presently on the market called Cytotec. The gentlewoman is familiar with that drug. If that drug were being applied for now, its primary intended use is for ulcer prevention and treatment. This amendment would not preclude the application of that NDA for that drug.

Mrs. LOWEY. So, if the gentleman would clarify once more for me, if the application does not include the specific term "chemical inducement of abortion," what would the gentleman expect the department to do?

Mr. COBURN. First of all, the department is much more knowledgeable than my colleague might give them credit for. They understand what drugs are used for, and they are scientists and very good at what they do. And if, in fact, some company is making application for a drug that the primary purpose is for something that fits the charge of the FDA, consumer safety, not death, not killing, but consumer safety, then I think they have very well the ability to figure out what the purpose of that application is. And they also have to very clearly state in their NDA what the purpose is for the drug.

Mrs. LOWEY. But then, if I can further ask for clarification again, if the application is submitted to the FDA without the specific term "chemical inducement of abortion" as its stated purpose, would the amendment apply?

Mr. COBURN. Again, I would give the gentlewoman the same answer:

If somebody applies for a drug that is intended to do chemical induced abortion, and that is what they are asking for an NDA for, then it would apply. If it is not intended for that, it would not apply. And so therefore any drug that has any other use that might be beneficial and under consumer protection, the charge of the FDA, would be recognized as a legitimate NDA application.

POINT OF ORDER

Mrs. LOWEY. May I proceed, Mr. Chairman, with my point of order?

The CHAIRMAN. The gentlewoman from New York will state her point of order.

Mrs. LOWEY. Mr. Chairman, the Coburn amendment violates clause 2 of rule XXI of the Rules of the House prohibiting authorization on an appropriations bill.

Under clause 2 of rule XXI a provision is authorizing in nature if it imposes a new duty on a Federal employee.

The Coburn amendment does just this by prohibiting the Food and Drug Administration from expending any funds on an activity for which it does not have a definition. Quote: "Drug for the chemical inducement of abortion," as the Coburn amendment is written, is not a term of art that is legally recognized by the FDA.

I have a memo from the Department of Health and Human Services, and will

ask that it appear in the RECORD, stating that the term is one that is not recognized by the agency and would require interpretation. Requiring the agency to define this term unto the Coburn amendment means imposing a new duty on a Federal official.

This is clearly authorizing language.

Mr. Chairman, the memo goes on to say, and I quote: Under the statute's drug-approval scheme, sponsors propose to the Food and Drug Administration particular medical indications for which they seek to conduct research. Sponsors then seek FDA approval to market the drug for those proposed indications that the research demonstrates that the drug is safe and effective for these indication.

Since sponsors are free to propose any medical indication for their drugs and are unlikely to propose this precise language under this amendment, FDA would need to interpret each of these terms in the amendment in this context, chemical inducement and abortion, none of which are defined in the Federal Food, Drug and Cosmetic Act, and evaluate whether the proposed indication was subjected to the restriction.

I have a letter from the gentleman from California (Mr. WAXMAN) the former chairman and the ranking member of the Committee on Commerce Subcommittee on Health and the Environment, agreeing with the assessment that the Coburn amendment is authorizing in nature, and I will ask that this letter be included in the RECORD as well.

Mr. Chairman, I ask the Chair to sustain a point of order against this amendment. It is a clear violation of rule XXI, clause 2 of the Rules of the House.

One more point. The duty is they have to make a determination even if the exact words of the application are different from those in the gentleman's amendment. The FDA needs to determine the meaning of the applicant's words, and I would suggest that the gentleman from Oklahoma (Mr. COBURN) has conceded this point, and I thank the Chair, and again I ask the Chair to sustain a point of order against this amendment. It is a clear violation of rule XXI, clause 2 of the Rules of the House.

Mr. COBURN. Mr. Chairman, I would like to respond to the gentlewoman's point of order.

The CHAIRMAN. The Chair will hear the gentleman's response on the point of order.

Mr. COBURN. Mr. Chairman, this is an amendment based first on a limitation of funds. Number two, there is nothing in this amendment that requires anything additional by the FDA because every NDA that comes before the FDA today has to state the purpose for which the drug application is made. And then finally is that we would not agree to a stipulation, as the gentlewoman from New York pointed out, that would limit anybody's application

for any drug and to apply this Rule of the House, we will happily concede, if we want to use the definition as she stated initially, in terms of abortifacient, if that is what she desires.

But the point is the actual functioning of the FDA, having brought drugs to the FDA, having filed NDAs, her statement is inaccurate, it does not follow the rules of the FDA, it is not a true statement to say that this will require any additional burden on the FDA.

Mr. Chairman, the FDA already requires every drug that has applied for it to state very specifically what its purpose is. If the purpose for the drug is not abortifacient, then there is no problem. If the purpose for the drug is it is, then the FDA would be limited.

This is a medical term under which the FDA already knows the definition. There is no question about what the definition is. There is no question in Federal law about what the definition is. So to confuse the issue under this rule is wrong.

Mrs. LOWEY. Mr. Chairman, may I ask the gentleman for further clarification?

The CHAIRMAN. The gentlewoman may proceed on her point of order.

Mrs. LOWEY. Mr. Chairman, I would like to ask the gentleman from Oklahoma if the application for RU-486 did not include the terms in the gentleman's amendment, how would the gentleman require the FDA to rule?

Mr. COBURN. What the gentlewoman from New York will have to tell me first to answer that is how was the RU-486 applied for.

Mrs. LOWEY. Mr. Chairman, I am asking the gentleman a question.

Mr. COBURN. The question is that the RU-486 was not applied for under that rule initially and is now.

Mrs. LOWEY. Yes, correct; or I am asking the gentleman, let us say if RU-486 did not apply for the application, would those terms expressed in the gentleman's amendment, how would the gentleman expect under his amendment the FDA to rule?

Mr. COBURN. Very easily. RU-486 is used for other things besides that. So, if they did not specify it, then that RU-486 would be approved for whatever it is specified for.

Very straightforward. Any drug that follows the guidelines of the FDA's NDA application process must state its intent. If RU-486 were applied for and it was not stated intent to accomplish what it in fact did, then it would be eligible for consideration under this rule.

The CHAIRMAN. Do other Members wish to be heard on the point of order?

Mr. WELDON of Florida. Mr. Chairman, I rise to speak in opposition to the gentlewoman's point of order, and I would just like to say that the point she is trying to make, I think, runs contrary to the whole tradition of what we do here in the House in these appropriations bills. It is the right and the prerogative of any Member to rise and put limitations or specifications on

how money is going to be spent, and this man's amendment, the gentleman from Oklahoma, is very simple and straightforward.

We all know that abortion is a very controversial issue, it is controversial in this body, it is controversial with the American people, and the House of Representatives has repeatedly voted, for example, that no Federal dollars will be used for performing abortions. The so-called Hyde amendment language easily passes the House with overwhelming majorities, and I think the reason for this is obvious. Even though many Members may feel that they are personally pro-choice, they think it is totally appropriate not to be spending Federal dollars for performing abortions, and to ask that the Food and Drug Administration not use its funds for putting abortion drugs on the market I think is a very reasonable proposal.

Mr. Chairman, I would strongly recommend the Chair rule against the gentlewoman's point of order and that the gentleman's amendment be allowed to be debated and voted on according to the proceedings of the House.

□ 1300

The CHAIRMAN. Are there other Members that wish to be heard on the point of order?

Mr. WAXMAN. Mr. Chairman, I am a little confused, and I want some clarification. As I understand what the gentleman from Oklahoma (Mr. COBURN) told us, he expects the FDA to make some kind of interpretation of the primary intent of the drug.

Mr. COBURN. Mr. Chairman, if the gentleman will yield, every application made to the FDA has to have the primary intent of a drug, as the gentleman well knows. My objection to the point of order is we presented this just like every other limitation that has been placed in this Congress on the dispensing of funds, and we have followed that guidelines and made no new requirements on the part of the FDA.

Mr. WAXMAN. Mr. Chairman, reclaiming my time, I am not asking the gentleman's conclusions on the point. I was trying to find out what he would ask FDA to do if a manufacturer came in and said the primary purpose of the drug was to be abortifacient. The gentleman would argue then that his amendment would apply, is that correct?

Mr. COBURN. Yes.

Mr. WAXMAN. If the manufacturer came in and asked for approval of a drug and it did not state that it was for that purpose, then the amendment would not apply?

Mr. COBURN. That is true.

Mr. WAXMAN. Now, my point, Mr. Chairman, is that FDA has to look at these words which are not words within the context of the FDA law. The chemical inducement of abortion is a new phrase. It has no precedent in FDA's statutory authority, it has no legal definition, no statutory reference, no

regulatory guidance and no legislative history.

In other words, if this amendment were adopted, the head of the FDA would have to look at the application from a drug manufacturer. If the application said that the drug was being requested for approval for the purpose of a chemical inducement of abortion, then I would say this amendment would apply and there is no question about it.

But if the gentleman, as he stated earlier, would ask the FDA administrator to in some way make some judgment that really that is what they intend, even though they do not say it, then we are doing something beyond a limitation on the use of the funds.

Mr. COBURN. If the gentleman would yield further, the FDA makes a judgment on every drug application made to it.

The CHAIRMAN. The gentleman from California (Mr. WAXMAN) may speak on his point of order. When he is finished, the Chair will recognize other Members. There is no yielding back and forth. Is the gentleman finished?

Mr. WAXMAN. I did not realize there is no yielding back and forth.

The CHAIRMAN. There is not. If the gentleman wants to continue, he may.

Mr. WAXMAN. Mr. Chairman, if I may conclude, my point is if the FDA Commissioner has to make a judgment, then this amendment should not be permitted in order.

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Mrs. LOWEY. Mr. Chairman, based on the gentleman's interpretation that unless the application for RU-486 contains the words "chemical induced abortion," the prohibition would not apply, I would withdraw my point of order.

The CHAIRMAN. The point of order is withdrawn.

Are there any Members who wish to speak on the amendment offered by the gentleman from Oklahoma (Mr. COBURN)?

Mrs. LINDA SMITH of Washington. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to speak in favor of this amendment. I think we need to go back to what the role of the Food and Drug Administration is, and that is the role of ensuring public safety and health, and that is by approving medically necessary drugs and devices, as well as ensuring food safety.

The amendment offered by the gentleman from Oklahoma (Mr. COBURN) is consistent with the mission of the FDA and simply bans funding for the testing, development or approval of any drug which causes a chemical abortion.

You see, women's health is really at stake. New evidence has indicated that abortions increase the chances of breast cancer. Presently breast cancer is the leading cause of cancer among middle-aged women. If protecting all members of society is the goal of the

FDA, certainly we need to study this link exhaustively before we approve any drug that causes a chemical abortion. Make no mistake, the morning after pill which the FDA approved is not a contraceptive. It is an abortifacient, meaning it causes a chemical abortion.

In my home state of Washington, for example, pharmacists are permitted to dispense the "morning after" pill without a doctor's prescription. A doctor gives the general prescription to the pharmacist, the pharmacist interviews the woman, and then he decides or she decides whether or not the woman is eligible for this abortion. The protection of the doctor is then removed and the ramifications of the woman's health, whether physical or emotional, are not even discussed.

Additionally, our taxpayer dollars should not be used for the FDA to implement the abortion drug RU-486. The long-term effects of this abortive are still unknown. In U.S. clinical trials, four women nearly bled to death and required blood transfusions. Many women bled profusely and required hospitalization, and 68 percent of the women experienced such severe pain that medication was required.

It is unacceptable for the Federal Government through the vehicle of the FDA to promote a drug whose sole purpose is to destroy the life of another human being.

I think the goal of most lawmakers, whether Republican or Democrat, is to find alternatives to abortion. But with the increased accessibility of these abortion pills, unwanted pregnancies become the medical equivalent of a simple headache. Just pop a pill, and your problems all will go away. In our State it is as easy as calling the hot line number which appeared in my State paper, 1-888-NOT-2-LATE.

Mr. Chairman, in an age of increased personal responsibility, this is not a signal to be advertising to American women. It is not a signal to be advertising to American youth.

The job of the FDA is to protect and promote the health of all citizens. That includes the health of unborn children of America. The funds in the agriculture appropriation bill should not be used by the FDA to test, develop or approve any drug which substitutes abortives for self-discipline, causing abortions.

Mr. Chairman, I urge my colleagues to support the amendment offered by the gentleman from Oklahoma (Mr. COBURN).

Mrs. LOWEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the gentleman's amendment. The Coburn amendment would stop the drug approval process in its tracks by placing unprecedented roadblocks in front of the FDA. It puts ideology ahead of science and compromises women's health.

This amendment would block final approval of a drug, RU-486, that the

FDA has already declared to be safe and effective. I repeat, this amendment would block final approval of a drug that the FDA has already declared safe and effective when it is issued on approval letter for the drug.

This amendment would make FDA drug approval contingent not on science, but on politics. The FDA is charged with protecting the public's health, and they should not be subject to congressional interference.

Mr. Chairman, let us allow the FDA to do its job free from right wing intimidation. The American people do not want the Christian Coalition in charge of our Nation's drug approval process.

The amendment specifically bars the FDA from approving any drug for the chemical inducement of abortion. But what does that term mean? The FDA does not know. I have a letter here from their chief counsel that says they have no idea what it means. Doctors and scientists do not know what that phrase means either.

So in addition to stopping RU-486, this broad, vague amendment may also prohibit the development of new contraceptive methods, if you believe, as some do, that any form of hormonal contraception, like the pill, is tantamount to abortion.

What about other drugs that as a side effect may induce abortion, like many chemotherapy drugs and anti-ulcer medication? Will research be halted on these lifesaving drugs as well? This amendment may also prevent the FDA from preventing unsafe and unsupervised clinical trials.

So, Mr. Chairman, this amendment is about much more than RU-486; it is about whether the FDA will be free to test, develop and improve important medications without Congressional interference. It is about whether politics or science will govern our Nation's drug approval process. This amendment would tie the FDA's hands, rendering it absolutely helpless in its primary task to evaluate scientific data consistent with its mandate to protect the public health.

Since *Roe v. Wade*, unfortunately, the anti-choice minority has attempted to stymie contraceptive research and suppress advances in reproductive health. For example, there used to be 13 pharmaceutical companies engaged in contraceptive research. There are now four. Thankfully, despite the right wing's pressure tactics, scientists have made some important progress. Among the most significant is the development of RU-486.

RU-486 would make a dramatic difference in the options available to women facing unwanted pregnancies. It could make abortion, already one of the safest medical procedures performed in the United States, even safer. The drug would eliminate the need for surgery for women choosing to use it. This would present tremendous health benefits for some women.

RU-486 is also effective early in pregnancy. Women in France have been

using RU-486 for a decade, and it is also available in Sweden and Great Britain. Over 400,000 women have had abortions using RU-486. The New England Medical Journal recently published clinical trials on RU-486 confirming its acceptability and effectiveness. RU-486 is safe and effective.

Mr. Chairman, RU-486 has another significant advantage over current abortion procedures. RU-486 can be given in the privacy of a physician's office, away from clinics blockaded by protestors, away from violence, harassment and intimidation. This change would give women greater freedom and security. This is a fact that terrifies so many.

What will the radical right do when RU-486 is approved? Will it picket every doctor's office in America? Will it harass every woman in the Nation? Thankfully, it cannot, and that is why it is fighting so hard to block the approval of this drug.

The gentleman from Oklahoma (Mr. COBURN) wants to turn the clock back, back on scientific advances, back all the way to the back-alley in the days of the wire hanger, back to the days when thousands of women died every year from unsafe, illegal abortions.

Well, we have news for the gentleman from Oklahoma (Mr. COBURN). We will not go back.

The CHAIRMAN. The time of the gentlewoman from New York (Mrs. LOWEY) has expired.

(By unanimous consent, Mrs. LOWEY was allowed to proceed for 1 additional minute.)

Mrs. LOWEY. Mr. Chairman, I would say to the gentleman from Oklahoma (Mr. COBURN) that I am a mother of three and a grandmother of two, and, frankly, I am sick and tired of debating abortion on this floor in the House of Representatives. Restriction after restriction, ban after ban, amendment after amendment. Enough.

If one really wants to reduce the number of abortions, work with us to increase funds for family planning, work with us to ensure that women have access to prescription contraceptives. I have been working to prevent unwanted pregnancies, to reduce the number of abortions. We need to make abortions less necessary, not more dangerous.

Mr. Chairman, I am very sorry that this amendment is being offered to an otherwise outstanding bill. Congress should not be ordering the FDA to suppress a drug that is safe and effective. This amendment flies in the face of sound science. It puts women's health in jeopardy, it sets a dangerous precedent, and it should be defeated.

Mr. WELDON of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Coburn amendment. I encourage all my colleagues on both sides of the aisle to vote in support of the Coburn amendment.

As the gentlewoman from New York alluded to, the issue of abortion is very

controversial. The American people are very divided on this issue, and there are many people who feel, as I do, very strongly on the sanctity of human life.

The House of Representatives and the Senate have repeatedly voted to restrict the use of Federal dollars when it comes to this issue. The best example is the Hyde amendment, which prohibits the use of Federal dollars for performing abortions.

□ 1315

We have a very simple amendment here. We ask the Food and Drug Administration not to get involved in this issue and not to get involved in administering or testing or approving drugs for the chemical inducement of abortion.

As to this issue that is being brought up that some of these drugs are safe and effective, I really want to speak to that point. As a physician, I took the Hippocratic oath. In the Hippocratic oath you do no harm. To say that these drugs are safe and effective, when in effect they are lethal for the unborn child growing in the womb of the woman, is a very deceptive and distorted use of the English language.

I would encourage all of my colleagues to seriously, those who are pro-life, obviously, those who take a pro-life position, but in particular those who may be personally pro-choice but may feel that it is appropriate to not be using Federal dollars for these kinds of purposes, consider that millions of Americans object to Federal dollars being used for these kinds of purposes.

I think it is a perfectly reasonable amendment. I think it is a well-thought-out amendment. I do not think there should be any confusion over there at the FDA as to what this is about, despite the claims by some that these words are somehow mysterious.

As to the claims of why there are so few pharmaceutical companies doing contraceptive research, that has nothing to do with these claims that it has some implication with those who oppose abortion. It is the trial attorneys and all the litigation. That is why there are a limited number of pharmaceutical companies doing research. It is very expensive. Then when you do put a product on the market, if anything goes wrong with those products, you get every lawyer in this country looking to draw up a lawsuit in the case.

I think this is a very good amendment. I would encourage all of my colleagues to vote yes.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. The gentleman from Florida acted as if this were a government subsidy for some abortion procedure. We are not talking about a government subsidy, we are talking about the Food and Drug Administration reviewing an application by a manufac-

turer who proposes to make a drug for a specific purpose that he wants to go out and sell, which is legal.

Whether Members like abortion or not, it is legal to have abortions in this country. Why should we stop the FDA from being able to consider a drug that might be used for an abortion that would be safer than other abortion procedures? Abortion is not going to stop. It is legal. Why should we now impose our judgment, saying that the FDA cannot even look at the science of what a manufacturer presents to it?

This amendment says we cannot test the substance, we cannot learn how it works, or judge if it has benefits over other procedures. Even if it became an approved drug, we could not manufacture it. This is the kind of an amendment that bars private actions in the free market. What the FDA does is not a subsidy. The FDA scrutinizes the science. They do not make judgments as to what products are brought before them, nor should they.

This amendment is wrong. It is certainly wrong to include it in an appropriation bill, where no one has examined the implication of this language for other FDA activities.

It is going to have a chill on manufacturers who want to deal with anything that may be considered unpopular. Today it may be unpopular to have an abortifacient, but a lot of manufacturers feel it might become unpopular to develop new contraceptive drugs. The FDA may be stopped from reviewing those drugs. This is a very wrong and offensive precedent. I would strongly urge my colleagues to oppose this amendment.

Mr. HOEKSTRA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, today I rise in support of the Coburn amendment. Last month myself and 14 of my colleagues sent a letter to the editor of the New England Journal of Medicine. We did that because we wanted to take issue with a report that they publicized.

In that report, they described the abortion drug RU-486 as "safe." This report is being cited as a landmark study by the advocates of RU-486 as proof of the safety and the effectiveness of the drug. Nothing could be further from the truth. As a matter of fact, that is a bizarre conclusion, given the facts.

The authors reported that RU-486 "... has been reported to be a teratogenic in humans." What does that mean? In plain English, it means the drug causes developmental malformations, or birth defects. Unfortunately, the authors mention this almost as an afterthought.

Given the possibility that this two-drug hit in RU-486 may cause birth defects unless drug-induced abortion occurs, the authors secured a commitment, they secured a commitment from all the participants to submit to a surgical abortion in the event the drugs fail.

The authors apparently sought to preempt the possibility of a participant having second thoughts after the administration of the drug, and their unborn child eventually being born with a skull deformity or some other birth defect.

There were 106 women who were administered the drugs, but they were not included in the final assessment phase of the study. The authors do not know, they do not know, whether any of these women who were administered the drug changed their minds and decided to carry their child to full term. The authors do not know whether a child or a number of children were born with a developmental malformation due to the administration of the drug, even though they stated that such a possibility may exist.

The authors claim that the two-drug regimen is effective in terminating pregnancies. This is a very selective choice of words, because what these drugs do is they are designed to kill human life. We are disappointed with the authors' insensitivity to the drug's full impact. At least 2,121 unborn children died because of the drugs administered during this study. The fact that this two-drug regimen was able to kill innocent human lives is nothing to celebrate.

We recognize the authors' intent in maintaining a narrow focus in their study, but when at least 4,242 people are involved in an experiment involving life or death, it would seem only appropriate that those executing the experiment assess the impact of the drugs on all of the study's participants, both the born and the unborn.

For these reasons, it is entirely inappropriate for the FDA to grant final approval for RU-486. For those reasons, it is also totally appropriate for my colleagues to support the Coburn amendment.

Ms. WOOLSEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the Coburn amendment. Make no mistake about it, this amendment is one more unwarranted intrusion to tell the Food and Drug Administration how to do its job. It is also one more time when Members of Congress step up here and act like they know more than the scientists and the experts, and they are going to tell scientists what their conclusions are before they even get there. And it is one more step in the far right's campaign against a woman's right for reproductive choice.

In 1993, following my election in 1992, I led the effort to bring RU-486 under FDA. I did that so that RU-486 would be tested here in the United States to ensure its safety and its effectiveness. My action and my concern was that women in the United States have access to a safe and effective method regarding unwanted pregnancies. I only wanted them to have access when it was deemed safe by the FDA.

Mr. Chairman, this amendment would set an alarming precedent by al-

lowing the unwarranted interference in the FDA's decision-making process. It would prevent the FDA from testing, developing, or approving any drug such as RU-486 for the chemical inducement of abortion, no matter the wishes of the women in this country.

Let us get the FDA out of politics, let us get Members of Congress out of the rights of women in their reproductive choice, and let us let the FDA determine which drugs are safe, which drugs are effective, and which drugs are good public health.

Mr. Chairman, I yield to the gentlewoman from New York (Mrs. LOWEY).

Mrs. LOWEY. I thank the gentlewoman for yielding to me, Mr. Chairman.

I would like to make a point to the gentleman. The New England Journal of Medicine and the FDA has declared this safe and effective. Again, a Member of Congress should not be making this determination.

I just wanted to make one additional point. It seems to me many of us reluctantly have been debating on this floor over and over again for the past few years about late-term abortions, and how dangerous and how inappropriate late-term abortions are.

RU-486 is effective and can be a choice of women early on in pregnancy. Again, it is the choice of a woman. It is up to the FDA to determine if it is safe. The FDA has said that it is safe and effective, as has the New England Journal of Medicine.

Mr. PITTS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this amendment will bring us back to the original purpose of the Food and Drug Administration. I rise to support the Coburn amendment.

As originally intended, the FDA should make their priority ensuring the safety of food and developing medically necessary drugs. We simply must provide America with a system where life-saving drugs are made available to patients in a timely and effective manner.

Mr. Chairman, when was the FDA given the task of making abortion on demand easier and more accessible? How does this action correspond with the assertion of the liberals that abortion should be a rare occurrence? Does not the FDA's current role in expediting the approval of abortifacients, which destroy lives, stand in direct contradiction to its responsibility to save them?

Mr. Chairman, abortion pills make unwanted pregnancy the medical equivalent of a headache: pop a pill and it will go away. But there are serious consequences for women. New scientific evidence has indicated that abortion may increase the risk of breast cancer. This link should be carefully examined before any new forms of abortion are approved. But we cannot ensure the safety of women if the FDA is speeding abortion pills through the approval process.

For the sake of women, we need to adopt the Coburn amendment. Just

consider these facts. Ten out of the 11 studies on American women report an increased risk of breast cancer after having an induced abortion. A metaanalysis in which all worldwide data were combined, published by Dr. Joel Brind and fellow researchers, reported that an induced abortion elevates a woman's risk of developing breast cancer by 30 percent. Currently, breast cancer is the leading form of cancer among middle-aged American women.

Mr. Chairman, it is time to send a message to the FDA: Return to the business of saving lives. If they truly care about the health of our Nation's women, Members will vote for the Coburn amendment and fight to keep women alive and well.

Ms. NORTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to speak against the amendment. We are constrained to come to the floor once again to send out an alert to American women that once again, one of the perennial attempts to get around Roe versus Wade and to stop abortions when they are most safe is at hand.

The Coburn amendment has grave constitutional implications. Roe versus Wade says we may not regulate abortion in the first trimester. There is a reason for that, because that is when it is safest. If anything, we want to encourage whatever abortions are to be done to be done then or not at all. RU-486 is only for early abortions, and it perhaps may be used for emergency contraception up to 72 hours after intercourse; again, at the very earliest period when abortions are performed.

□ 1330

Moreover, this method may be the only method or the safest method that some women should use. And that clearly comes under Roe vs. Wade's concern with the health of the mother. Surgical abortion obviously poses more risk, the most risk, at least as far as we know. And at least given the kind of approval that RU-486 has thus far received, we do know this, that for most of us a nonsurgical procedure is in fact preferable.

We want to say to women who need abortions, while the rest of us for other procedures will use nonsurgical procedures, we want them to repair to surgical procedures, to invasive procedures only. For abortion we make a distinction between women and men that we do not otherwise make.

Mr. Chairman, if nonsurgical abortion is available, if it is the safest method, it must be allowed. Most of us would choose nonsurgical methods if they were available. Indeed, managed care requirements today in health care often require us to use nonsurgical methods because they are the least costly.

Why would we want to deny safe, nonsurgical approaches here? Why would the government want to turn toward the most invasive form of abortion? Why should the government not

step back and say whatever method women use is something that the government is in no position to prescribe in the particular case?

Why is it not an absolute insult to women to deny them the right to choose the safest method, if any method at all must be chosen? Why is it not a risk to the health of women for whom more invasive methods would simply not be prescribed? Should we not welcome the fact that there is a choice for those women?

And why would this body want to engage in the know-nothing, nonscientific practice of, for the first time in this Chamber, saying what the FDA should approve and what it should not approve? That takes us back to the kind of ignorance I would hope this body had escaped long ago.

If this drug is safe, by denying the right to go through the approved channels we are welcoming back-channel, black market approaches to getting this drug. Surgical and invasive procedures are not preferable. Once again, we are invading the territory of a physician and his patient. Whenever we do that, we lose our way.

Let us stand back, even if we regard this as not the right way to go, and leave it to those who are in the best position to make this most personal of decisions, and that is the physician and the woman who has to decide what is safest for her.

Mr. SMITH of New Jersey. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me make it very clear, and I think we all more and more of us realize this, abortion is violence against children. Abortion is violence against children. It is not some benign act that benefits or nurtures. It kills babies.

Now that can be done by the hideous method that we have described called partial-birth abortion where the brains are literally sucked out of the body of a child. Or it can be done by dismemberment, by hooking up a powerful loop-shaped knife, a curette, to a suction machine 20 to 30 times more powerful than the average vacuum cleaner. Or it could be done by a myriad of chemical potions, salt solution that burns the baby to death.

The other side on this issue will defend that as choice. That is violence against children. Saline abortion is violence against children. RU-486, Mr. Chairman, is just the newest form of baby pesticide. A chemical that has no intention of nurturing, providing any benefit to the baby, just kill the baby. Make the child a deceased member of the human race.

Mr. Chairman, the FDA should be all about testing and helping to bring to market those drugs that save and nurture and heal. RU-486 does not heal, unless Members think that a baby is a disease or a wart or some other disposable appendage that has to be done away with.

The "choice" rhetoric is cheap. It denigrates human life. Unborn children

are no different than my colleagues or I, except by reason of their immaturity and their developmental status in life. That is all. Nothing is added from the moment of fertilization until natural death.

When will we wake up and see that birth is an event that happens to each and every one of us. It is not the beginning of life. And an unborn child deserves at least the minimum respect of not having new drugs, new devices developed that kill them.

It is a new mouse trap. How can we better kill those kids? These are boys and girls that are being killed. Chemical abortions, RU-486, as we all know, usually has its operative effect at around the seventh week. Other chemical potions have it at other times during the pregnancy. But all of them do the same thing. They kill the baby.

Mr. Chairman, I ask my colleagues, support this very important amendment offered by the gentleman from Oklahoma (Mr. COBURN). I urge everyone to support it.

Mr. COBURN. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from Oklahoma.

Mr. COBURN. Mr. Chairman, I would like to address a couple of points that have been made. When discussing 486, the words "safe" and "effective" have been used. I want us to think about what those words mean.

Safe and effective for whom? They are not safe for women. They cause tremendous pain, tremendous discomfort, tremendous risk for blood transfusion, tremendous risk for instrumentation, and tremendous risk to the remaining fetuses and children who will be born outside of that complication.

The other thing that was said, and words tell us a whole lot, what was said is if we cannot use this medical form of abortion, it is a limitation on contraception. That was made in an earlier statement, which tells us exactly what people mean.

Abortion is a method of contraception in this country. The taking of innocent human life is used as a method of contraception. I would make two points. The Supreme Court said they did not know when life began. But we know when life ends in this country, when there is not a heartbeat and there is not a brain wave.

Well, there is a brain wave at 41 days post-conception, and there is a heartbeat at 26 days post-conception, before most women know they are pregnant. There is no question, life is present when RU-486 will be applied. Should the government be in the business of killing unborn babies? I think not.

Ms. DELAURO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I stand before my colleagues as a cancer survivor to strongly oppose this amendment. This amendment would not just block access and research to reproductive health drugs, although that in itself is enough reason to vote against it.

In an attempt to promote an anti-choice agenda, proponents of this amendment are risking the lives of millions of Americans, because this amendment would block the development of drugs that cure cancer and other kinds of medical treatment because some of those drugs can cause miscarriage, also known as spontaneous abortion.

Mr. Chairman, I am an ovarian cancer survivor. Millions of Americans suffer from cancer every year. Anyone who has undergone chemotherapy sessions in a desperate attempt to kill the cancer cells before they kill them knows the warnings given by the doctor. If a woman is pregnant, chemotherapy could endanger the pregnancy and induce miscarriage. I was fortunate that those circumstances did not apply to me. But if we pass this amendment, the development of new lifesaving drugs would be blocked.

If cancer patients wait while researchers draw closer and closer to a cure for cancer, this amendment would close the door in their faces. No more hope. No chance of developing a drug that could save their lives.

When I received my cancer diagnosis, it felt as if the world had stopped. The mind just cannot comprehend what is happening. And once it does sink in, all one thinks about is how am I going to beat this? What can I do to get my life back?

Let us make sure that patients who are faced with this difficult moment have access to the best science that is available; not science that is compromised by politics.

This amendment is a slap in the face to the women of America. It is a slap in the face to anyone who has survived a cancer diagnosis. It is a slap in the face to anyone who is fighting now to beat this deadly disease.

Mr. Chairman, I urge everyone in this House who cares about improving the health of Americans and the life of Americans to vote against this very dangerous amendment.

Mr. HOSTETTLER. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. COBURN. Mr. Chairman, will the gentleman yield?

Mr. HOSTETTLER. I yield to the gentleman from Oklahoma.

Mr. COBURN. Mr. Chairman, first of all let me say to the gentlewoman from Connecticut (Ms. DELAURO), I am very thankful that she is a cancer survivor. This amendment in no way whatsoever will limit any drug research.

The other reason why I know that that is the case is because I too am a cancer survivor. I am 23 years out. I would never put forth an amendment on the floor of this House that would limit that. What this amendment does is have the FDA work on drugs that save life rather than take life.

Mr. HOSTETTLER. Mr. Chairman, reclaiming my time, I rise in strong

support of this amendment from the gentleman from Oklahoma (Mr. COBURN). The Supreme Court has told us that we have to allow the killing of unborn children on demand. It has not, however, told us that government has an obligation to facilitate this service.

This amendment would help ensure that American taxpayers do not end up funding the approval of drugs that are designed to kill our unborn children. FDA's mission as it was created by this Congress should be to approve drugs that save lives, not end lives.

With all the illnesses we have to deal with, cancer, AIDS, heart disease, diabetes, the examples go on and on, why would we want to spend our hard-earned dollars on drugs designed to exterminate our most valued resource, our children?

There is a core principle at issue today: Whether the government is obligated to provide the people's money to research and test new and innovative ways to kill our children for a right pulled out of thin air by a majority of the Supreme Court.

□ 1345

Congress has the responsibility under our Constitution to ensure that the money we collect from hardworking and productive Americans is spent wisely.

Mr. Chairman, let us ensure the FDA uses America's resources to help us and not kill us.

I would simply add, Mr. Chairman, that today I have heard a lot of discussion with regard to the elevation of the science of the efficient extermination of human life almost to the extent of a virtue. I think we must be very careful in our rhetoric when we talk about that efficient extermination of human life, that we do not go to a very troubling time in our world's history, a time when Nazi Germany carried on the efficient extermination of human life. Where do we go from here with that argument? Do we go to the efficient extermination of life that cannot sustain itself, to the aged and to the infirm?

Mr. Chairman, in order that we do not start down that slippery slope or that we do not go further down that slippery slope, I urge a yes vote on this amendment.

Mrs. LOWEY. Mr. Chairman, will the gentleman yield?

Mr. HOSTETTLER. I yield to the gentlewoman from New York.

Mrs. LOWEY. Mr. Chairman, I would like to respond to the gentleman that as a Jewish woman and one who knows many survivors of the Holocaust, I personally resent the comparison of this amendment to the Holocaust and the evils of the extermination that took place during that tragic time that we have to learn from and not make comparisons that perhaps are very inappropriate.

Mr. HOSTETTLER. Mr. Chairman, I go back to the words of Jeremiah the prophet, who said that he knew me in my

mother's womb, and simply say that there are those of us that do believe that life does begin at conception and that we are indeed involved in the extermination of human life in this very day.

Mr. FAZIO of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am sure that many who may be viewing these proceedings would be surprised to discover we are debating the agriculture appropriations bill. It has always been one of those bills that passes here with great support on a bipartisan basis. I regret very much that it today has been taken over by those who are, for want of a better term, pursuing what we call a wedge issue.

I would not be surprised that despite all the work that has been done by the gentleman from New Mexico (Mr. SKEEN) and the gentlewoman from Ohio (Ms. KAPTUR) to bring a very popular and broadly supported bill to the floor, it could well be vetoed if this language were adopted by the House today and remain in the bill through conference.

If it were somehow to become law, I believe it would be ultimately considered unconstitutional because it clearly flies in the face of the current Supreme Court view of a woman's right to choose in this country, and clearly *Roe v. Wade* remains the law of the land.

But I am most troubled by the fact that for the first time since the Food, Drug and Cosmetic Act was placed on the books, since 1962, in fact, we are attempting to legislate what we have until now wisely left up to a regulatory authority to decide, and that is whether a safe and effective drug should be brought to market.

Now, the gentleman from Oklahoma (Mr. COBURN) and others have said that this is an unsafe and ineffective drug. That is to be determined by the FDA. That is their charge. We would be, I think, in terrible error if we got in front of that decision and attempted to legislate it. It would be unprecedented and I think totally inappropriate.

It is a fact, however, that in France and Great Britain and Sweden, extensive clinical trials have demonstrated that it is safe and effective. But this FDA, known to the rest of the world as perhaps the bottom line gold standard for drug review systems, is being more cautious, and they should be. That is correct. It is right that they slow down this process of bringing RU-486 to the public because, in fact, they want to determine a number of things about it before it is made available to the general public.

The irony is, of course, as the gentleman from Oklahoma (Mr. COBURN) indicated in his colloquy with the gentleman from California (Mr. WAXMAN) and the gentlewoman from New York (Mrs. LOWEY) earlier on the point of order, it would be possible to bring RU-486 to the market for some other purpose. And I think it is important to point out that there are at least pub-

licly reported uses for RU-486 that are unrelated to termination of pregnancy.

So under the interpretation we heard today and the one in which we are currently debating, we could have it on the market for other purposes and the public, should they be interested in taking it for termination of pregnancy, could well be exposed to an unsafe and ineffective product because the FDA, under this amendment, has not been allowed to make that determination to their satisfaction.

Mr. COBURN. Mr. Chairman, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from Oklahoma.

Mr. COBURN. Mr. Chairman, I would just say that we would not want any drug, no matter what its ill-use might be, if it has a positive use to ever be denied by the FDA. We know lots of drugs today that are approved by the FDA that have tremendously, terrible side effects. Thalidomide has a terrible side effect profile, but yet it has some tremendous positive benefits.

Mr. FAZIO of California. Reclaiming my time, the point I was making is that there are purposes for which RU-486 might be approved under the gentleman's interpretation that would make the public vulnerable, when it uses them to terminate a pregnancy, to the potential for the very unsafe and ineffective purposes that the gentleman ascribes to them. So I think the gentleman is being somewhat duplicitous when he indicates that he wants drugs to be made available for other purposes when in fact he may be knowingly exposing the public to problems.

I would underscore "may" because I think it is very likely that the FDA would determine otherwise and bring this to the market for a variety of purposes.

The public should have their regulatory agency, the one we all look to as the benchmark for drugs around the world, in a position to make this without a political decision made by this Congress. I would say to my colleagues that if this amendment is adopted we have opened unfortunately a new avenue to be involved in an area that we should best leave to science, to research.

We, as politicians with a variety of causes and beliefs, should not be getting in the way of what this agency has done very effectively since its founding and that is to bring scientific research to bear so that drugs can be taken when appropriate for the most safe and effective purposes.

There is no question, in my view, that for us to break the bounds that we have imposed on ourselves since 1962, to politicize this agency is to take a slippery slope we do not want to go down, even under the wedge issue arguments that we are hearing today about abortion.

I would hope that my colleagues, even those who consider themselves to be "pro-life" or "antiabortion," will

think twice about using still one more mechanism to inject this abortion debate into the deliberations of this Congress. Vote no on the Coburn amendment.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I move to strike the requisite number of words.

I rise in strong opposition to this amendment. It is sobering that Saint Thomas Aquinas defined life as beginning at conception. I mention that only to remind us that this difficult issue of when life begins is an issue on which great religious leaders of the world have differed, and so it is an issue on which a Nation that believes in freedom, that enshrines freedom of religion in our Constitution, must have the courage to allow our own people individually to decide.

I am a Republican in part because I take so seriously the issue of personal responsibility. I believe each of us has the responsibility to make wise choices, to support themselves, to contribute to their fellow citizens and their communities. And I believe family planning represents personal responsibility that is indeed one's obligation as a mature, free adult, to plan the number of children they have, the spacing between them. And so I believe contraceptives in general are very important to freedom in our Nation and to the health of women and the strength of families.

The issue before us today is whether we in a free Nation will have the knowledge to use our freedom wisely and to take personal responsibility for our lives. We cannot pass this amendment and not do damage to the concept of freedom and the belief in the power of knowledge as the essential foundation for a free society.

Many drugs, including chemotherapy and anti-ulcer medications, have the side effect of inducing abortion. Under this amendment, you could not do research on something, even if that was not its primary goal, because it might have the side effect of inducing abortion.

I would remind this body that we spent months talking about fetal tissue research because people did not want to use fetal tissue for critical research that could cure critical and terribly important diseases in America, and the goal was not to ultimately use fetal tissue, the goal was to learn enough about it from the research to be able to create the artificial substances or the substitute substances that would allow us to create, to produce the drugs en masse that we learned were necessary from fetal tissue research. And the issue here is to learn enough from some of the rather crude, in the sense of their mechanism, drugs like that that is the subject of this amendment so that we can in time develop something that you take right away that does not interfere with, that is not an abortifacient in your definition because it has its effect before there is even fertilization.

But we cannot get to that point if we do not allow science to move forward and we do not get better experience. Why should I, as an American woman, be told or my daughters be told that they must take contraceptive pills months and months and months, years of their life, when I believe, if we allow the research to go forward, we can provide something that will give them a much more direct control over whether or not conception takes place at implantation and the development of a fetus.

I do want to conclude my comments by saying that wherever you block the path of science, you block the development of knowledge and you compromise the opportunity that only a free society can give you. In freedom, we depend on knowledge to empower us to make the right decisions.

I trust the women of America and the men to whom they are married to make good decisions about whether or not to use one type of contraception over another. I do not believe that it is the government's responsibility to tell our citizens how or what mechanism they should use. We do not want HMOs to do that, and I do not want the government to do that.

So I would urge defeat of this amendment because I think it cuts off essential research.

Mrs. MALONEY of New York. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. COBURN. Mr. Chairman, will the gentlewoman yield?

Mrs. MALONEY of New York. I yield to the gentleman from Oklahoma.

Mr. COBURN. Mr. Chairman, I would just again reemphasize, nothing in this amendment limits any drug whose primary purpose is not an abortifacient. There is no limitation on any research of any other drug if its primary purpose is not that of an abortifacient.

I thank the gentlewoman for yielding to me.

Mrs. MALONEY of New York. Mr. Chairman, I yield to the gentleman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Chairman, that may be the gentleman's impression now or what his intent is, but we all know how these things work in government. Frankly, it will have such a dampening effect on research that it will affect research on things that have a dual purpose or that could be perceived as having a dual purpose. That is my concern about it.

Mrs. MALONEY of New York. Reclaiming my time, Mr. Chairman, I rise in opposition to the Coburn amendment, which will prohibit the FDA from testing, developing or approving any drug that has the chemical inducement of abortion connected to it.

Last time I looked, the Supreme Court ruled that abortion was legal. However, this Congress continues to attack a woman's right to choose. This is the 85th vote against reproductive rights since the beginning of the 104th

Congress or maybe I should say since the beginning of the antiwoman Congress.

□ 1400

What might surprise some people is the fact that this vote is about much more than reproductive rights. As my colleague on the other side of the aisle, the gentlewoman from Connecticut (Mrs. JOHNSON) was pointing out. It is about biomedical research.

One of the drugs targeted by this amendment is used to treat a number of conditions, among them, uterine fibroids, certain breast cancers, and endometriosis. To my gentleman friends on the other side of the aisle, it is even used to treat conditions affecting men, like glaucoma, arthritis, AIDS, lupus, and some types of burns.

Blocking research and development of safe and effective drugs in the name of abortion politics is just plain wrong. My opponents called their position on reproductive rights pro-life and their position on this bill pro-life, but this amendment and their position is anything but. I urge a "no" vote on this amendment. Science should not be compromised by politics. It would be a dampening affect on research. I urge all of my colleagues to vote "no".

Mr. ADERHOLT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in support of the amendment offered by the gentleman from Oklahoma (Mr. COBURN), an amendment that could literally save the lives of countless children throughout the United States.

Abortion creates several risks for women, it is well-known. Also, abortion drugs are often dispensed without a doctor's approval. Because of the numerous possible side effects associated with abortions, these drugs should not be administered without consultation and medical follow-up with the doctor.

The Food and Drug Administration has an ethical duty not to approve a drug that will be harmful to mothers taking the drug. The research on RU-486 is insufficient in regards to long-term effects, the linkage with breast cancer and medical complications.

I commend my colleague, the gentleman from Oklahoma, for taking steps to save children and to save their mothers from these life-endangering drugs. I would encourage my colleagues to support this amendment.

Mr. MCDERMOTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is a pretty amazing debate. I was sitting over in my office listening to it, and I could not help but think that this is yet another assault on women.

I am a physician also. In 1963, before there was abortion reform, before the *Rowe v. Wade* was decided in the Supreme Court, I was an intern in a hospital in New York State and stood next to the bed while two women died from back-alley abortions.

We have come a long way since 1963. One of those women left six children orphaned, and the other one left eight. We said as a society, our Supreme Court said, women have a right to choose.

Yet, this Congress, I understand, the Republican Party has a problem with women voters in this country. It is very clear. They assault them over and over again. As the last speaker, the gentlewoman from New York (Mrs. MALONEY) talked about, 85 times in this session this issue has come up.

It comes up on everything. It comes up on IMF funding. We will not fund the International Monetary Fund if somebody, somewhere, somehow is doing anything related to women's rights to choose. Military women cannot use their own money to take care of this problem in a military facility when they are assigned by this government to serve overseas.

We say, if you want an abortion, I do not care what the Supreme Court says, we the Congress say you cannot have one in a military hospital, even if you pay with your own money. That is the kind of assault we have.

Here today we have a new twist on it. I think the slippery slope of where we are going is really one to consider, because when we start standing out here and saying what is good science and what is bad science, and we choose this drug over that drug, what will be next in that list?

Here we have the Food and Drug Administration says that this drug is safe. They have done the tests. They are waiting for a pharmaceutical manufacturer to step up and say we want to produce it in this country. That is the only thing that stands between this particular pharmaceutical being on the counter and not.

What this bill does is put a threat out to the pharmaceutical industry, do not step up to produce this pharmaceutical, because if you do, you are going to get the wrath of a certain segment of this society.

My view is that when we start to threaten people and do not want to listen to the science, we are going down a long slippery slope. I feel like I am in Tennessee in the middle of the Scopes trial where it is religion versus science.

We have the FDA. We asked them to look at this, and they looked at it; and we say, well, we do not like the conclusion you came up with, so we will use a little technical way of preventing it ever being put on the counter.

I heard the gentlewoman from Washington come out here and mix this whole thing up more with the drug overall, which is in the State of Washington in the State legislature. They evaluated this, and it is not pro-life. They looked at the issue and said "We will give the pharmacy board the right to deal with that issue," and they do it.

Anybody who wants, they can go to a pharmacy. If they follow a protocol and they fit the protocol under the supervision of a doctor, they can get the

drug. They do not just hand it out to anybody that comes into the drug store. I went and called the pharmacy board in the State of Washington to find out what goes on.

The fact is that what we are saying here is that we want women to use whatever antiquated way we have, not to have the best that science can produce.

One of the fascinating things about the last 3½ years around here, the bigger part of the assault on women is that we put on welfare reform. We said we are going to throw people off welfare. What that has done, in at least three States there has been an increase in abortions. The very people who say they do not want abortion buy the mechanism of driving people off welfare and giving women no way to feed their kids; we are then leading to more abortions.

They do not want to do it with a pill. They want to put them through surgery. I can understand why an obstetrician might want to do that if he was in the business of doing this. But I do not hear obstetricians who are in support of a woman's right to choose coming to this House and saying "Do not give them a pill because I want to make money doing abortions." What I hear is that the pharmaceutical that is there will do it just as effectively.

Mr. DICKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Oklahoma (Mr. COBURN).

Mr. COBURN. Mr. Chairman, the first point I would make is there are two obstetricians in this House, and neither of us would terminate a baby and take that life unless it depended on the life of the mother. There is no question. We know a lot about life. We get to see it. We get to see a lot of death. So to answer the gentleman, there are two obstetricians in this House, and we would not take the life of the baby any time unless there is a cause in the life of the mother at risk.

Number two, let us not confuse what this issue is about. This is about whether the Federal Government is going to spend money to figure out how to kill babies. That is what it is. It is not anything else. Should we be in the business of spending Federal tax dollars to facilitate the death of children? It is not any other than that. We can say it is, we can skirt around all the other issues, but this is about whether or not we are going to have an institution of this government which is charged with protecting life spend its resources to take life.

Mr. DICKEY. Mr. Chairman, I would like to say I am on this subcommittee of the Committee on Appropriations, and this issue did not come up for discussion.

We have in our laws the provision that no Federal funding will be made available for abortions, time and time again, both domestically and in foreign relations and in our appropriations for

foreign countries. This is because people differ on this issue, but we mainly prohibit any Federal funding.

In this case we would have Federal funding because of an agency's decision and not because of a vote of this body. I am against that. I think abortion is wrong. That is my opinion. I think abortion is wrong. I do not think for sure that we ought to have Federal funding.

This is a way that we can avoid having this attempt for Federal funding for abortion when it is against the women of the people of America.

Ms. FURSE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to point out, first of all, while I am very much in favor of this amendment, I would like to say to the physicians who choose not to do abortions, that is their choice. But when I was a young woman, prior to *Rowe v. Wade*, I did not get that choice. I was not allowed to make that choice. Neither was my physician husband allowed to make the choice of whether he would provide safe and legal abortions.

I do not think we should talk so broadly about choice. It is a woman's choice and her family's choice and her physician's choice we are talking about.

This has been, in my view, the most antichoice Congress that I have ever had the sadness to witness. It is also the most antiscience amendment that I have ever witnessed. But over and above that, it is an antiwoman amendment.

Why should American women not have the right to access to the same level of science as European women or British women? Why is this Congress, a few people who have certain ideas, why are they preventing American women access to good science?

I am asking the people of this body to understand that it is time for us to step forward, to vote "no" on antichoice legislation, to vote "no" on antiscience legislation, and above all, to vote "no" on antiwoman legislation.

We are 55 percent of the population of this country. We have a right to make those choices. We do not have to give up that right that the Supreme Court has stood for, that we have fought for. We are not going back to back-room abortions. We will not do that. The women of this country will not. If there is access to good science, let American women have that access. So I ask my colleagues to vote "no". Vote for women.

Mr. PAPPAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I urge my colleagues to vote for the amendment of the gentleman from Oklahoma (Mr. COBURN). As he spoke very eloquently just a few moments ago, this is not about a choice for an unborn baby.

The Federal Government or those within this administration, whether it is the FDA, they have their marching

orders, no matter what their personal view is, from the administration to facilitate abortion on demand under any circumstance. That is not what the American people support. I certainly do not support that.

The gentleman from Oklahoma (Mr. COBURN) spoke a few minutes ago about how he, as a physician, would only in the case of the endangerment of the life of the mother take an unborn baby's life. If we recall what so many people throughout the history of this country have said, that we here in this body, I believe, are here to protect the vulnerable; and certainly the unborn baby in the mother's womb is among the most vulnerable that could ever exist.

I enthusiastically support the amendment of the gentleman from Oklahoma (Mr. COBURN) and certainly urge my colleagues to do the same.

Ms. PELOSI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to the Coburn amendment. Women in America have a right to choose. I believe it is the goal of all of us in this body to reduce the number of abortions and to make abortions safe, legal, and rare. It is on the subject of safe that I would like to address my remarks.

This amendment offered by the gentleman from Oklahoma (Mr. COBURN) would prohibit the expenditure by the Food and Drug Administration of funds for testing, development or approval, including approval of production, manufacturing or distribution, of any drug for the chemical inducement of abortion.

The RU-486, the chemical, the product in question, is a nonsurgical abortion, and it is one that is also medically safe.

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Such a ban, as the gentleman from Oklahoma is proposing, would unconstitutionally restrict the right to choose. For some women for whom surgical abortion poses risks or is otherwise inappropriate, the Coburn amendment would unconstitutionally again restrict the right to choose. For others who live far from clinics, it would preclude the possibility of receiving RU-486 in their physician's office, thus burdening again the right to choose.

This option is an effective and nonsurgical method of early abortion that has been in use since 1981. The drug was approved for use in France, Great Britain and Sweden following extensive clinical trials that determined its effectiveness and its safety.

In September 1996, the FDA issued an approval letter for early abortion, but the agency is waiting for more information about its manufacturing and labeling before giving Mifepristone final approval and allow it to be prescribed to American women outside of clinical trials.

I know this is a very difficult issue for our colleagues to deal with. We

have deep commitments in our point of view as to whether a woman has a right to choose, and I certainly respect my colleagues' views on the question of abortion. But the fact is that women do have a right to choose that option, in consultation with their family, their doctors, their God, and we should not make that decision a more dangerous one for them.

Again, in the interest of making abortions in our country rare, legal but safe when necessary, I urge my colleagues to vote against the Coburn amendment. It always interests me to see over and over again in this body how many times we vote against scientific research. By going forward with this, we can learn a lot about making these processes even safer for women. As Members of Congress who represent the people of our country, we have a responsibility to do that. For that reason, I urge my colleagues once again to vote "no" on the Coburn amendment.

Mr. COBURN. Mr. Chairman, will the gentleman yield?

Ms. PELOSI. I yield to the gentleman from Oklahoma.

Mr. COBURN. I would just say, to do research to take life, to do research to take life somehow does not smell right in this body; to spend our dollars. I agree, nobody wins in abortion.

Ms. PELOSI. Reclaiming my time, I appreciate the gentleman's point. As a Catholic and a mother of five children myself and one who comes from a family that is not always sympathetic to my point of view on this subject, I understand and respect the gentleman's beliefs. But I will say as a Catholic that I have done some of my own research on this and the gentleman's statement implies that he knows when life begins. I think that is really a mystery to all of us. St. Augustine himself when he was asked would a fetus before 3 months, would that entity go to the judgment day and be resurrected into heaven as a person, he said, "No, because before 3 months, it isn't a person." They made him a saint. He is a saint of the church. He has a different view from some of my colleagues on when life begins. We do not know. It is a mystery. So I do not know how my colleagues on the other side of the aisle can determine that this is taking a life. I do not view it that way, and I urge my colleagues to vote "no."

Ms. KAPTUR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wanted to say with all due respect to the gentleman from Oklahoma who is offering this amendment, I respect his sincerity and the fervor with which he approaches this. As someone who does not support Federal funding of abortion myself, I have studied his proposal carefully. I am opposing him for three reasons, and I ask my colleagues to give me forbearance on this.

The first is, as ranking member of this particular committee, number one, this issue never came before us. We

have not had one hearing, certainly not at the subcommittee level. The FDA never referenced it in its testimony. Then when we went to the full committee, this was never considered. There have been absolutely no hearings on this matter, which is a very serious scientific and medical as well as moral issue, and I think it is inappropriate to try to attach it to this agriculture bill. We have never been faced with this on this subcommittee before.

Secondly, I really do not think that at this point in the deliberations in this Committee of the Whole that we are going to make the proper, objective scientific judgment. Congress has never, and I underline, never previously legislated the approval or disapproval of any particular drug over which the FDA has responsibility for review. These decisions on the appropriateness of medical devices and medications are based in the agency solely on the scientific evidence available. None of that has been presented to any single Member here, with perhaps the exception of the author of the amendment. I do not know. But we certainly have not had the benefit of that.

Thirdly, let me say that though the laws of our country say that abortion under certain circumstances is legal, certainly when the life of the mother is at stake, if this particular pill or medication or drug would somehow alleviate pain and suffering, there is no reason that we should in those circumstances disallow the FDA, with as little testimony as we have had on this and as little experience as we have had as a subcommittee and a full committee to deal with this, which actually should be in the authorizing committee, there is no reason that we should for any single life in this country deny that family the ability to have access to that medication if they would need it. But I really do not think that that should be the debate here today.

Based on the lack of hearings in our own committee, and with respect for the chairman of our committee with a desire to try to have decent scientific evidence, full hearings on the matter, and finally not to deny any family that might find this necessary as a way to alleviate pain and suffering of the mother, I think voting for the amendment would be ill-advised at this time.

Mrs. LOWEY. Mr. Chairman, if the gentlewoman will yield, the ranking member of this committee was so eloquent and she has done such a fine job on this bill.

Mr. GALLEGLY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Oklahoma.

Mr. COBURN. I thank the gentleman from California for yielding.

Mr. Chairman, I would like to make three points. Number one, we can deny medical scientific fact. We have heard that argument a lot.

Scientific fact: Life is present at least at 26 days. We will recognize that

in this country as a consequence of the logical recognition of when death is. Death is the absence of brain waves, death is the absence of a heartbeat, in all 50 States, also associated with the Federal code. We know at least life is present at 26 days. We are talking about using medicines to take life. We can deny it. But scientific fact has already proven that the heart is beating in a fetus at 26 days. Scientific fact, it has already been proven that the brain waves are functioning in a fetus at 41 days. Most women in this country have barely recognized conception by the time those two scientific facts have been made available.

Number two. This was offered to the committee. The committee chose not to put it in its mark. So it is not that we did not approach the committee, we did in good faith, attempting to put this in the committee's mark.

The gentlewoman makes a good point that there were not hearings on it. There do not need to be hearings on this issue in this country. We do not need to have a hearing, because the hearing is going to go back to the same issue, is it right to take an unborn life or not. Is it right? I mean, that is what it will all filter down to. My opinion, and that of a large number of this country and the majority of this body, is it is not right to take an unborn life. Scientific evidence now shows, without a doubt, that life is present at least at 41 days.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. GALLEGLY. I yield to the gentleman from Ohio.

Ms. KAPTUR. Mr. Chairman, I just want to say for purposes of the record, this Member believes that life begins at conception. St. Augustine may not agree with me. The author of the amendment may not agree with me. We each make those decisions on our own. However, I would say to the gentleman that as far as the procedures we follow on committee, no one came to our staff, I as ranking member, and our legislative people, regarding this particular amendment. It is extremely complicated. Had I known, we would have asked for special hearings on this amendment. But I would say with all due respect to the gentleman, we were never afforded the opportunity to consider this. We did not know this was going to come up until just yesterday.

Mr. GALLEGLY. Reclaiming my time, Mr. Chairman, I would yield again to the gentleman from Oklahoma.

Mr. COBURN. To the gentlewoman from Ohio, I appreciate and I am sorry that she was not made aware of that. This was given to the committee, majority committee staff.

Finally, I too believe that life begins at conception. But I know what the Supreme Court said, is they do not know when life begins. But we know life is present at 26 days. We know it. There is no doubt about it. Science has proven that by our very definition of death in

this country. We say that you are dead when you do not have brain waves and you do not have a heartbeat. If you are dead, then if you have those two things, you have got to be alive. Otherwise, the definition of death is out the window in this country.

Ms. JACKSON-LEE of Texas. Mr. Chairman, thank you for the opportunity to speak on this important issue. As an advocate for women's choice, I must strongly oppose this amendment. Mr. COBURN's amendment will prohibit the FDA from testing, developing, or approving any drug that induces an abortion. However, Mr. Chairman, this debate is not about Mifepristone or abortion. It is about the FDA's ability to test, research, and approve any drug based on sound scientific evidence. Reproductive health drugs should be subject to the FDA's strict science based requirements that any drug must meet before approval can be granted. These drugs should not be singled out simply because they are reproductive health drugs. Mifepristone, a drug which has been available to women in Europe for 20 years was found safe and effective for early medical abortion by the FDA in 1986. The search, however for an appropriate American manufacturer and distributor is being stymied by anti choice extremists whose opposition to abortion has led to a climate of intimidation and harassment. This amendment would not only prohibit development and testing of drugs to be used to provide women another safe and private reproductive choice, it also would target new contraceptive development. Mr. Chairman, I strongly oppose this amendment and I urge my colleagues to do the same.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma (Mr. COBURN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. COBURN. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 482, further proceedings on the amendment offered by the gentleman from Oklahoma (Mr. COBURN) will be postponed.

The point of no quorum is considered withdrawn.

Mr. SKEEN. 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. TIAHRT) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4101) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, had come to no resolution thereon.

CONFERENCE REPORT ON H.R. 2676,
INTERNAL REVENUE SERVICE
RESTRUCTURING AND REFORM
ACT OF 1998

Mr. ARCHER submitted the following conference report and statement on

the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes:

CONFERENCE REPORT (H. REPT. 105-599)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; WAIVER OF ESTIMATED TAX PENALTIES; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the "Internal Revenue Service Restructuring and Reform Act of 1998".

(b) *AMENDMENT OF 1986 CODE.*—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) *WAIVER OF ESTIMATED TAX PENALTIES.*—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an installment required to be paid on or before the 30th day after the date of the enactment of this Act to the extent such underpayment was created or increased by any provision of this Act.

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

Sec. 1. Short title; amendment of 1986 Code; waiver of estimated tax penalties; table of contents.

TITLE I—REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Reorganization of the Internal Revenue Service

Sec. 1001. Reorganization of the internal revenue service.

Sec. 1002. IRS mission to focus on taxpayers' needs.

Subtitle B—Executive Branch Governance and Senior Management

Sec. 1101. Internal Revenue Service Oversight Board.

Sec. 1102. Commissioner of Internal Revenue; other officials.

Sec. 1103. Treasury Inspector General for Tax Administration.

Sec. 1104. Other personnel.

Sec. 1105. Prohibition on executive branch influence over taxpayer audits and other investigations.

Subtitle C—Personnel Flexibilities

Sec. 1201. Improvements in personnel flexibilities.

Sec. 1202. Voluntary separation incentive payments.

Sec. 1203. Termination of employment for misconduct.

Sec. 1204. Basis for evaluation of Internal Revenue Service employees.

Sec. 1205. Employee training program.

TITLE II—ELECTRONIC FILING

Sec. 2001. Electronic filing of tax and information returns.

Sec. 2002. Due date for certain information returns.

Sec. 2003. Paperless electronic filing.

- Sec. 2004. Return-free tax system.
 Sec. 2005. Access to account information.
- TITLE III—TAXPAYER PROTECTION AND RIGHTS**
- Sec. 3000. Short title.
 Subtitle A—Burden of Proof
- Sec. 3001. Burden of proof.
 Subtitle B—Proceedings by Taxpayers
- Sec. 3101. Expansion of authority to award costs and certain fees.
 Sec. 3102. Civil damages for collection actions.
 Sec. 3103. Increase in size of cases permitted on small case calendar.
 Sec. 3104. Actions for refund with respect to certain estates which have elected the installment method of payment.
 Sec. 3105. Administrative appeal of adverse IRS determination of tax-exempt status of bond issue.
 Sec. 3106. Civil action for release of erroneous lien.
- Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities
- Sec. 3201. Relief from joint and several liability on joint return.
 Sec. 3202. Suspension of statute of limitations on filing refund claims during periods of disability.
 Subtitle D—Provisions Relating to Interest and Penalties
- Sec. 3301. Elimination of interest rate differential on overlapping periods of interest on tax overpayments and underpayments.
 Sec. 3302. Increase in overpayment rate payable to taxpayers other than corporations.
 Sec. 3303. Mitigation of penalty on individual's failure to pay for months during period of installment agreement.
 Sec. 3304. Mitigation of failure to deposit penalty.
 Sec. 3305. Suspension of interest and certain penalties where Secretary fails to contact individual taxpayer.
 Sec. 3306. Procedural requirements for imposition of penalties and additions to tax.
 Sec. 3307. Personal delivery of notice of penalty under section 6672.
 Sec. 3308. Notice of interest charges.
 Sec. 3309. Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas.
- Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities
- PART I—DUE PROCESS**
- Sec. 3401. Due process in IRS collection actions.
- PART II—EXAMINATION ACTIVITIES**
- Sec. 3411. Confidentiality privileges relating to taxpayer communications.
 Sec. 3412. Limitation on financial status audit techniques.
 Sec. 3413. Software trade secrets protection.
 Sec. 3414. Threat of audit prohibited to coerce tip reporting alternative commitment agreements.
 Sec. 3415. Taxpayers allowed motion to quash all third-party summonses.
 Sec. 3416. Service of summonses to third-party recordkeepers permitted by mail.
 Sec. 3417. Notice of IRS contact of third parties.
- PART III—COLLECTION ACTIVITIES**
- SUBPART A—APPROVAL PROCESS**
- Sec. 3421. Approval process for liens, levies, and seizures.
- SUBPART B—LIENS AND LEVIES**
- Sec. 3431. Modifications to certain levy exemption amounts.
 Sec. 3432. Release of levy upon agreement that amount is uncollectible.
- Sec. 3433. Levy prohibited during pendency of refund proceedings.
- Sec. 3434. Approval required for jeopardy and termination assessments and jeopardy levies.
 Sec. 3435. Increase in amount of certain property on which lien not valid.
 Sec. 3436. Waiver of early withdrawal tax for IRS levies on employer-sponsored retirement plans or IRAs.
- SUBPART C—SEIZURES**
- Sec. 3441. Prohibition of sales of seized property at less than minimum bid.
 Sec. 3442. Accounting of sales of seized property.
 Sec. 3443. Uniform asset disposal mechanism.
 Sec. 3444. Codification of IRS administrative procedures for seizure of taxpayer's property.
 Sec. 3445. Procedures for seizure of residences and businesses.
- PART IV—PROVISIONS RELATING TO EXAMINATION AND COLLECTION ACTIVITIES**
- Sec. 3461. Procedures relating to extensions of statute of limitations by agreement.
 Sec. 3462. Offers-in-compromise.
 Sec. 3463. Notice of deficiency to specify deadlines for filing Tax Court petition.
 Sec. 3464. Refund or credit of overpayments before final determination.
 Sec. 3465. IRS procedures relating to appeals of examinations and collections.
 Sec. 3466. Application of certain fair debt collection procedures.
 Sec. 3467. Guaranteed availability of installment agreements.
 Sec. 3468. Prohibition on requests to taxpayers to give up rights to bring actions.
- Subtitle F—Disclosures to Taxpayers
- Sec. 3501. Explanation of joint and several liability.
 Sec. 3502. Explanation of taxpayers' rights in interviews with the Internal Revenue Service.
 Sec. 3503. Disclosure of criteria for examination selection.
 Sec. 3504. Explanations of appeals and collection process.
 Sec. 3505. Explanation of reason for refund disallowance.
 Sec. 3506. Statements regarding installment agreements.
 Sec. 3507. Notification of change in tax matters partner.
 Sec. 3508. Disclosure to taxpayers.
 Sec. 3509. Disclosure of Chief Counsel advice.
- Subtitle G—Low Income Taxpayer Clinics
- Sec. 3601. Low income taxpayer clinics.
- Subtitle H—Other Matters
- Sec. 3701. Cataloging complaints.
 Sec. 3702. Archive of records of Internal Revenue Service.
 Sec. 3703. Payment of taxes.
 Sec. 3704. Clarification of authority of Secretary relating to the making of elections.
 Sec. 3705. IRS employee contacts.
 Sec. 3706. Use of pseudonyms by IRS employees.
 Sec. 3707. Illegal tax protester designation.
 Sec. 3708. Provision of confidential information to Congress by whistleblowers.
 Sec. 3709. Listing of local IRS telephone numbers and addresses.
 Sec. 3710. Identification of return preparers.
 Sec. 3711. Offset of past-due, legally enforceable State income tax obligations against overpayments.
 Sec. 3712. Reporting requirements in connection with education tax credit.
- Subtitle I—Studies
- Sec. 3801. Administration of penalties and interest.
 Sec. 3802. Confidentiality of tax return information.
- Sec. 3803. Study of noncompliance with internal revenue laws by taxpayers.
 Sec. 3804. Study of payments made for detection of underpayments and fraud.
- TITLE IV—CONGRESSIONAL ACCOUNTABILITY FOR THE INTERNAL REVENUE SERVICE**
- Subtitle A—Oversight
- Sec. 4001. Expansion of duties of the Joint Committee on Taxation.
 Sec. 4002. Coordinated oversight reports.
 Subtitle B—Century Date Change
- Sec. 4011. Century date change.
 Subtitle C—Tax Law Complexity
- Sec. 4021. Role of the Internal Revenue Service.
 Sec. 4022. Tax law complexity analysis.
- TITLE V—ADDITIONAL PROVISIONS**
- Sec. 5001. Lower capital gains rates to apply to property held more than 1 year.
 Sec. 5002. Clarification of exclusion of meals for certain employees.
 Sec. 5003. Clarification of designation of normal trade relations.
- TITLE VI—TECHNICAL CORRECTIONS**
- Sec. 6001. Short title; coordination with other titles.
 Sec. 6002. Definitions.
 Sec. 6003. Amendments related to title I of 1997 Act.
 Sec. 6004. Amendments related to title II of 1997 Act.
 Sec. 6005. Amendments related to title III of 1997 Act.
 Sec. 6006. Amendment related to title IV of 1997 Act.
 Sec. 6007. Amendments related to title V of 1997 Act.
 Sec. 6008. Amendments related to title VII of 1997 Act.
 Sec. 6009. Amendments related to title IX of 1997 Act.
 Sec. 6010. Amendments related to title X of 1997 Act.
 Sec. 6011. Amendments related to title XI of 1997 Act.
 Sec. 6012. Amendments related to title XII of 1997 Act.
 Sec. 6013. Amendments related to title XIII of 1997 Act.
 Sec. 6014. Amendments related to title XIV of 1997 Act.
 Sec. 6015. Amendments related to title XV of 1997 Act.
 Sec. 6016. Amendments related to title XVI of 1997 Act.
 Sec. 6017. Amendment related to Transportation Equity Act for the 21st Century.
 Sec. 6018. Amendments related to Small Business Job Protection Act of 1996.
 Sec. 6019. Amendments related to Taxpayer Bill of Rights 2.
 Sec. 6020. Amendment related to Omnibus Budget Reconciliation Act of 1993.
 Sec. 6021. Amendment related to Revenue Reconciliation Act of 1990.
 Sec. 6022. Amendment related to Tax Reform Act of 1986.
 Sec. 6023. Miscellaneous clerical and deadwood changes.
 Sec. 6024. Effective date.
- TITLE VII—REVENUE PROVISIONS**
- Sec. 7001. Clarification of deduction for deferred compensation.
 Sec. 7002. Termination of exception for certain real estate investment trusts from the treatment of stapled entities.
 Sec. 7003. Certain customer receivables ineligible for mark-to-market treatment.
 Sec. 7004. Modification of AGI limit for conversions to Roth IRAs.
- TITLE VIII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO**
- Sec. 8001. Identification of limited tax benefits subject to line item veto.

TITLE IX—TECHNICAL CORRECTIONS TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

- Sec. 9001. Short title.
 Sec. 9002. Authorization and program subtitle.
 Sec. 9003. Restorations to general provisions subtitle.
 Sec. 9004. Restorations to program streamlining and flexibility subtitle.
 Sec. 9005. Restorations to safety subtitle.
 Sec. 9006. Elimination of duplicate provisions.
 Sec. 9007. Highway finance.
 Sec. 9008. High priority projects technical corrections.
 Sec. 9009. Federal Transit Administration programs.
 Sec. 9010. Motor carrier safety technical correction.
 Sec. 9011. Restorations to research title.
 Sec. 9012. Automobile safety and information.
 Sec. 9013. Technical corrections regarding subtitle A of title VIII.
 Sec. 9014. Corrections to veterans subtitle.
 Sec. 9015. Technical corrections regarding title IX.
 Sec. 9016. Effective date.

TITLE I—REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Reorganization of the Internal Revenue Service

SEC. 1001. REORGANIZATION OF THE INTERNAL REVENUE SERVICE.

(a) **IN GENERAL.**—The Commissioner of Internal Revenue shall develop and implement a plan to reorganize the Internal Revenue Service. The plan shall—

(1) supersede any organization or reorganization of the Internal Revenue Service based on any statute or reorganization plan applicable on the effective date of this section;

(2) eliminate or substantially modify the existing organization of the Internal Revenue Service which is based on a national, regional, and district structure;

(3) establish organizational units serving particular groups of taxpayers with similar needs; and

(4) ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of *ex parte* communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

(b) **SAVINGS PROVISIONS.**—

(1) **PRESERVATION OF SPECIFIC TAX RIGHTS AND REMEDIES.**—Nothing in the plan developed and implemented under subsection (a) shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

(2) **CONTINUING EFFECT OF LEGAL DOCUMENTS.**—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of any function transferred or affected by the reorganization of the Internal Revenue

Service or any other administrative unit of the Department of the Treasury under this section, and

(B) which are in effect at the time this section takes effect, or were final before the effective date of this section and are to become effective on or after the effective date of this section, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of the Treasury, the Commissioner of Internal Revenue, or other authorized official, a court of competent jurisdiction, or by operation of law.

(3) **PROCEEDINGS NOT AFFECTED.**—The provisions of this section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) at the time this section takes effect, with respect to functions transferred or affected by the reorganization under this section but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(4) **SUITS NOT AFFECTED.**—The provisions of this section shall not affect suits commenced before the effective date of this section, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(5) **NONABATEMENT OF ACTIONS.**—No suit, action, or other proceeding commenced by or against the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service), or by or against any individual in the official capacity of such individual as an officer of the Department of the Treasury, shall abate by reason of the enactment of this section.

(6) **ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.**—Any administrative action relating to the preparation or promulgation of a regulation by the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) relating to a function transferred or affected by the reorganization under this section may be continued by the Department of the Treasury through any appropriate administrative unit of the Department, including the Internal Revenue Service with the same effect as if this section had not been enacted.

(c) **EFFECTIVE DATE.**—This section shall take effect on the date of the enactment of this Act.

SEC. 1002. IRS MISSION TO FOCUS ON TAXPAYERS' NEEDS.

The Internal Revenue Service shall review and restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs.

Subtitle B—Executive Branch Governance and Senior Management

SEC. 1101. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

(a) **IN GENERAL.**—Section 7802 (relating to the Commissioner of Internal Revenue) is amended to read as follows:

“SEC. 7802. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

“(a) **ESTABLISHMENT.**—There is established within the Department of the Treasury the In-

ternal Revenue Service Oversight Board (hereafter in this subchapter referred to as the ‘Oversight Board’).

“(b) **MEMBERSHIP.**—

“(1) **COMPOSITION.**—The Oversight Board shall be composed of 9 members, as follows:

“(A) 6 members shall be individuals who are not otherwise Federal officers or employees and who are appointed by the President, by and with the advice and consent of the Senate.

“(B) 1 member shall be the Secretary of the Treasury or, if the Secretary so designates, the Deputy Secretary of the Treasury.

“(C) 1 member shall be the Commissioner of Internal Revenue.

“(D) 1 member shall be an individual who is a full-time Federal employee or a representative of employees and who is appointed by the President, by and with the advice and consent of the Senate.

“(2) **QUALIFICATIONS AND TERMS.**—

“(A) **QUALIFICATIONS.**—Members of the Oversight Board described in paragraph (1)(A) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in 1 or more of the following areas:

“(i) Management of large service organizations.

“(ii) Customer service.

“(iii) Federal tax laws, including tax administration and compliance.

“(iv) Information technology.

“(v) Organization development.

“(vi) The needs and concerns of taxpayers.

“(vii) The needs and concerns of small businesses.

In the aggregate, the members of the Oversight Board described in paragraph (1)(A) should collectively bring to bear expertise in all of the areas described in the preceding sentence.

“(B) **TERMS.**—Each member who is described in subparagraph (A) or (D) of paragraph (1) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (1)(A)—

“(i) 2 members shall be appointed for a term of 3 years,

“(ii) 2 members shall be appointed for a term of 4 years, and

“(iii) 2 members shall be appointed for a term of 5 years.

“(C) **REAPPOINTMENT.**—An individual who is described in subparagraph (A) or (D) of paragraph (1) may be appointed to no more than two 5-year terms on the Oversight Board.

“(D) **VACANCY.**—Any vacancy on the Oversight Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

“(3) **ETHICAL CONSIDERATIONS.**—

“(A) **FINANCIAL DISCLOSURE.**—During the entire period that an individual appointed under subparagraph (A) or (D) of paragraph (1) is a member of the Oversight Board, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act, except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

“(B) **RESTRICTIONS ON POST-EMPLOYMENT.**—For purposes of section 207(c) of title 18, United States Code, an individual appointed under subparagraph (A) or (D) of paragraph (1) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Board, except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

“(C) **MEMBERS WHO ARE SPECIAL GOVERNMENT EMPLOYEES.**—If an individual appointed under subparagraph (A) or (D) of paragraph (1) is a special Government employee, the following additional rules apply for purposes of chapter 11 of title 18, United States Code:

“(i) RESTRICTION ON REPRESENTATION.—In addition to any restriction under section 205(c) of title 18, United States Code, except as provided in subsections (d) through (i) of section 205 of such title, such individual (except in the proper discharge of official duties) shall not, with or without compensation, represent anyone to or before any officer or employee of—

“(I) the Oversight Board or the Internal Revenue Service on any matter,

“(II) the Department of the Treasury on any matter involving the internal revenue laws or involving the management or operations of the Internal Revenue Service, or

“(III) the Department of Justice with respect to litigation involving a matter described in subclause (I) or (II).

“(ii) COMPENSATION FOR SERVICES PROVIDED BY ANOTHER.—For purposes of section 203 of such title—

“(I) such individual shall not be subject to the restrictions of subsection (a)(1) thereof for sharing in compensation earned by another for representations on matters covered by such section, and

“(II) a person shall not be subject to the restrictions of subsection (a)(2) thereof for sharing such compensation with such individual.

“(D) WAIVER.—The President may, only at the time the President nominates the member of the Oversight Board described in paragraph (1)(D), waive for the term of the member any appropriate provision of chapter 11 of title 18, United States Code, to the extent such waiver is necessary to allow such member to participate in the decisions of the Board while continuing to serve as a full-time Federal employee or a representative of employees. Any such waiver shall not be effective unless a written intent of waiver to exempt such member (and actual waiver language) is submitted to the Senate with the nomination of such member.

“(4) QUORUM.—5 members of the Oversight Board shall constitute a quorum. A majority of members present and voting shall be required for the Oversight Board to take action.

“(5) REMOVAL.—

“(A) IN GENERAL.—Any member of the Oversight Board appointed under subparagraph (A) or (D) of paragraph (1) may be removed at the will of the President.

“(B) SECRETARY AND COMMISSIONER.—An individual described in subparagraph (B) or (C) of paragraph (1) shall be removed upon termination of service in the office described in such subparagraph.

“(6) CLAIMS.—

“(A) IN GENERAL.—Members of the Oversight Board who are described in subparagraph (A) or (D) of paragraph (1) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member.

“(B) EFFECT ON OTHER LAW.—This paragraph shall not be construed—

“(i) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions,

“(ii) to affect any other right or remedy against the United States under applicable law, or

“(iii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

“(C) GENERAL RESPONSIBILITIES.—

“(1) OVERSIGHT.—

“(A) IN GENERAL.—The Oversight Board shall oversee the Internal Revenue Service in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.

“(B) MISSION OF IRS.—As part of its oversight functions described in subparagraph (A), the Oversight Board shall ensure that the organiza-

tion and operation of the Internal Revenue Service allows it to carry out its mission.

“(C) CONFIDENTIALITY.—The Oversight Board shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

“(2) EXCEPTIONS.—The Oversight Board shall have no responsibilities or authority with respect to—

“(A) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions,

“(B) specific law enforcement activities of the Internal Revenue Service, including specific compliance activities such as examinations, collection activities, and criminal investigations,

“(C) specific procurement activities of the Internal Revenue Service, or

“(D) except as provided in subsection (d)(3), specific personnel actions.

“(d) SPECIFIC RESPONSIBILITIES.—The Oversight Board shall have the following specific responsibilities:

“(1) STRATEGIC PLANS.—To review and approve strategic plans of the Internal Revenue Service, including the establishment of—

“(A) mission and objectives, and standards of performance relative to either, and

“(B) annual and long-range strategic plans.

“(2) OPERATIONAL PLANS.—To review the operational functions of the Internal Revenue Service, including—

“(A) plans for modernization of the tax system,

“(B) plans for outsourcing or managed competition, and

“(C) plans for training and education.

“(3) MANAGEMENT.—To—

“(A) recommend to the President candidates for appointment as the Commissioner of Internal Revenue and recommend to the President the removal of the Commissioner,

“(B) review the Commissioner's selection, evaluation, and compensation of Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service, and

“(C) review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service.

“(4) BUDGET.—To—

“(A) review and approve the budget request of the Internal Revenue Service prepared by the Commissioner,

“(B) submit such budget request to the Secretary of the Treasury, and

“(C) ensure that the budget request supports the annual and long-range strategic plans.

“(5) TAXPAYER PROTECTION.—To ensure the proper treatment of taxpayers by the employees of the Internal Revenue Service.

The Secretary shall submit the budget request referred to in paragraph (4)(B) for any fiscal year to the President who shall submit such request, without revision, to Congress together with the President's annual budget request for the Internal Revenue Service for such fiscal year.

“(e) BOARD PERSONNEL MATTERS.—

“(1) COMPENSATION OF MEMBERS.—

“(A) IN GENERAL.—Each member of the Oversight Board who—

“(i) is described in subsection (b)(1)(A), or

“(ii) is described in subsection (b)(1)(D) and is not otherwise a Federal officer or employee,

shall be compensated at a rate of \$30,000 per year. All other members shall serve without compensation for such service.

“(B) CHAIRPERSON.—In lieu of the amount specified in subparagraph (A), the Chairperson of the Oversight Board shall be compensated at a rate of \$50,000 per year.

“(2) TRAVEL EXPENSES.—

“(A) IN GENERAL.—The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sub-

chapter I of chapter 57 of title 5, United States Code, to attend meetings of the Oversight Board and, with the advance approval of the Chairperson of the Oversight Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Oversight Board.

“(B) REPORT.—The Oversight Board shall include in its annual report under subsection (f)(3)(A) information with respect to the travel expenses allowed for members of the Oversight Board under this paragraph.

“(3) STAFF.—

“(A) IN GENERAL.—The Chairperson of the Oversight Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

“(B) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Chairperson of the Oversight Board, a Federal agency shall detail a Federal Government employee to the Oversight Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

“(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

“(f) ADMINISTRATIVE MATTERS.—

“(1) CHAIR.—

“(A) TERM.—The members of the Oversight Board shall elect for a 2-year term a chairperson from among the members appointed under subsection (b)(1)(A).

“(B) POWERS.—Except as otherwise provided by a majority vote of the Oversight Board, the powers of the Chairperson shall include—

“(i) establishing committees,

“(ii) setting meeting places and times,

“(iii) establishing meeting agendas, and

“(iv) developing rules for the conduct of business.

“(2) MEETINGS.—The Oversight Board shall meet at least quarterly and at such other times as the Chairperson determines appropriate.

“(3) REPORTS.—

“(A) ANNUAL.—The Oversight Board shall each year report with respect to the conduct of its responsibilities under this title to the President, the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

“(B) ADDITIONAL REPORT.—Upon a determination by the Oversight Board under subsection (c)(1)(B) that the organization and operation of the Internal Revenue Service are not allowing it to carry out its mission, the Oversight Board shall report such determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.”

(b) RESTRICTION ON DISCLOSURE OF RETURN INFORMATION TO OVERSIGHT BOARD MEMBERS.—Section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

“(5) INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

“(B) EXCEPTION FOR REPORTS TO THE BOARD.—If—

“(i) the Commissioner or the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties, and

“(ii) the Commissioner or such Inspector General determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry out such duties,

such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.”

(c) CONFORMING AMENDMENTS.—

(1) Section 4946(c) (relating to definitions and special rules for chapter 42) is amended by striking “or” at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting “, or”, and by adding at the end the following new paragraph:

“(7) a member of the Internal Revenue Service Oversight Board.”

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

“Sec. 7802. Internal Revenue Service Oversight Board.”

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) INITIAL NOMINATIONS TO INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—The President shall submit the initial nominations under section 7802 of the Internal Revenue Code of 1986, as added by this section, to the Senate not later than 6 months after the date of the enactment of this Act.

(3) EFFECT ON ACTIONS PRIOR TO APPOINTMENT OF OVERSIGHT BOARD.—Nothing in this section shall be construed to invalidate the actions and authority of the Internal Revenue Service prior to the appointment of the members of the Internal Revenue Service Oversight Board.

SEC. 1102. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

(a) IN GENERAL.—Section 7803 (relating to other personnel) is amended to read as follows: “**SEC. 7803. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.**

“(a) COMMISSIONER OF INTERNAL REVENUE.—

“(1) APPOINTMENT.—

“(A) IN GENERAL.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue who shall be appointed by the President, by and with the advice and consent of the Senate, to a 5-year term. Such appointment shall be made from individuals who, among other qualifications, have a demonstrated ability in management.

“(B) VACANCY.—Any individual appointed to fill a vacancy in the position of Commissioner occurring before the expiration of the term for which such individual's predecessor was appointed shall be appointed only for the remainder of that term.

“(C) REMOVAL.—The Commissioner may be removed at the will of the President.

“(D) REAPPOINTMENT.—The Commissioner may be appointed to more than one 5-year term.

“(2) DUTIES.—The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

“(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and

“(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs,

and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

“(3) CONSULTATION WITH BOARD.—The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

“(b) CHIEF COUNSEL FOR THE INTERNAL REVENUE SERVICE.—

“(1) APPOINTMENT.—There shall be in the Department of the Treasury a Chief Counsel for the Internal Revenue Service who shall be appointed by the President, by and with the consent of the Senate.

“(2) DUTIES.—The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary, including the duty—

“(A) to be legal advisor to the Commissioner and the Commissioner's officers and employees,

“(B) to furnish legal opinions for the preparation and review of rulings and memoranda of technical advice,

“(C) to prepare, review, and assist in the preparation of proposed legislation, treaties, regulations, and Executive orders relating to laws which affect the Internal Revenue Service,

“(D) to represent the Commissioner in cases before the Tax Court, and

“(E) to determine which civil actions should be litigated under the laws relating to the Internal Revenue Service and prepare recommendations for the Department of Justice regarding the commencement of such actions.

If the Secretary determines not to delegate a power specified in subparagraph (A), (B), (C), (D), or (E), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

“(3) PERSONS TO WHOM CHIEF COUNSEL REPORTS.—The Chief Counsel shall report directly to the Commissioner of Internal Revenue, except that—

“(A) the Chief Counsel shall report to both the Commissioner and the General Counsel for the Department of the Treasury with respect to—

“(i) legal advice or interpretation of the tax law not relating solely to tax policy, and

“(ii) tax litigation, and

“(B) the Chief Counsel shall report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy.

If there is any disagreement between the Commissioner and the General Counsel with respect to any matter jointly referred to them under subparagraph (A), such matter shall be submitted to the Secretary or Deputy Secretary for resolution.

“(4) CHIEF COUNSEL PERSONNEL.—All personnel in the Office of Chief Counsel shall report to the Chief Counsel.

“(c) OFFICE OF THE TAXPAYER ADVOCATE.—

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the ‘Office of the Taxpayer Advocate’.

“(B) NATIONAL TAXPAYER ADVOCATE.—

“(i) IN GENERAL.—The Office of the Taxpayer Advocate shall be under the supervision and direction of an official to be known as the ‘National Taxpayer Advocate’. The National Taxpayer Advocate shall report directly to the Com-

missioner of Internal Revenue and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

“(ii) APPOINTMENT.—The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

“(iii) QUALIFICATIONS.—An individual appointed under clause (ii) shall have—

“(I) a background in customer service as well as tax law, and

“(II) experience in representing individual taxpayers.

“(iv) RESTRICTION ON EMPLOYMENT.—An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Internal Revenue Service during the 2-year period ending with such appointment and such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the National Taxpayer Advocate. Service as an officer or employee of the Office of the Taxpayer Advocate shall not be taken into account in applying this clause.

“(2) FUNCTIONS OF OFFICE.—

“(A) IN GENERAL.—It shall be the function of the Office of the Taxpayer Advocate to—

“(i) assist taxpayers in resolving problems with the Internal Revenue Service,

“(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

“(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

“(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

“(B) ANNUAL REPORTS.—

“(i) OBJECTIVES.—Not later than June 30 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

“(ii) ACTIVITIES.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

“(I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

“(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

“(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

“(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

“(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

“(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction.

“(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b).

“(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers.

“(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems.

“(X) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes, and

“(XI) include such other information as the National Taxpayer Advocate may deem advisable.

“(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

“(iv) COORDINATION WITH REPORT OF TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—To the extent that information required to be reported under clause (ii) is also required to be reported under paragraph (1) or (2) of subsection (d) by the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate shall not contain such information in the report submitted under such clause.

“(C) OTHER RESPONSIBILITIES.—The National Taxpayer Advocate shall—

“(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates,

“(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates,

“(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office, and

“(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

“(D) PERSONNEL ACTIONS.—

“(i) IN GENERAL.—The National Taxpayer Advocate shall have the responsibility and authority to—

“(I) appoint local taxpayer advocates and make available at least 1 such advocate for each State, and

“(II) evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of a taxpayer advocate described in subclause (I).

“(ii) CONSULTATION.—The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate’s responsibilities under this subparagraph.

“(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner.

“(4) OPERATION OF LOCAL OFFICES.—

“(A) IN GENERAL.—Each local taxpayer advocate—

“(i) shall report to the National Taxpayer Advocate or delegate thereof,

“(ii) may consult with the appropriate supervisory personnel of the Internal Revenue Service regarding the daily operation of the local office of the taxpayer advocate,

“(iii) shall, at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate, and

“(iv) may, at the taxpayer advocate’s discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

“(B) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

“(d) ADDITIONAL DUTIES OF THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—

“(1) ANNUAL REPORTING.—The Treasury Inspector General for Tax Administration shall include in one of the semiannual reports under section 5 of the Inspector General Act of 1978—

“(A) an evaluation of the compliance of the Internal Revenue Service with—

“(i) restrictions under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 on the use of enforcement statistics to evaluate Internal Revenue Service employees,

“(ii) restrictions under section 7521 on directly contacting taxpayers who have indicated that they prefer their representatives be contacted,

“(iii) required procedures under section 6320 upon the filing of a notice of a lien,

“(iv) required procedures under subchapter D of chapter 64 for seizure of property for collection of taxes, including required procedures under section 6330 regarding levies, and

“(v) restrictions under section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998 on designation of taxpayers,

“(B) a review and a certification of whether or not the Secretary is complying with the requirements of section 6103(e)(8) to disclose information to an individual filing a joint return on collection activity involving the other individual filing the return,

“(C) information regarding extensions of the statute of limitations for assessment and collection of tax under section 6501 and the provision of notice to taxpayers regarding requests for such extension,

“(D) an evaluation of the adequacy and security of the technology of the Internal Revenue Service,

“(E) any termination or mitigation under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998,

“(F) information regarding improper denial of requests for information from the Internal Revenue Service identified under paragraph (3)(A), and

“(G) information regarding any administrative or civil actions with respect to violations of the fair debt collection provisions of section 6304, including—

“(i) a summary of such actions initiated since the date of the last report, and

“(ii) a summary of any judgments or awards granted as a result of such actions.

“(2) SEMIANNUAL REPORTS.—

“(A) IN GENERAL.—The Treasury Inspector General for Tax Administration shall include in each semiannual report under section 5 of the Inspector General Act of 1978—

“(i) the number of taxpayer complaints during the reporting period;

“(ii) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources;

“(iii) a summary of the status of such complaints and allegations; and

“(iv) a summary of the disposition of such complaints and allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such complaints and allegations.

“(B) Clauses (iii) and (iv) of subparagraph (A) shall only apply to complaints and allegations of serious employee misconduct.

“(3) OTHER RESPONSIBILITIES.—The Treasury Inspector General for Tax Administration shall—

“(A) conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code, and

“(B) establish and maintain a toll-free telephone number for taxpayers to use to confidentially register complaints of misconduct by Internal Revenue Service employees and incorporate the telephone number in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1).”.

(b) NOTICE OF RIGHT TO CONTACT OFFICE INCLUDED IN NOTICE OF DEFICIENCY.—Section 6212(a) (relating to notice of deficiency) is amended by adding at the end the following new sentence: “Such notice shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.”.

(c) EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.—Section 7811(a) (relating to taxpayer assistance orders) is amended to read as follows:

“(a) AUTHORITY TO ISSUE.—

“(1) IN GENERAL.—Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the National Taxpayer Advocate may issue a Taxpayer Assistance Order if—

“(A) the National Taxpayer Advocate determines the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary, or

“(B) the taxpayer meets such other requirements as are set forth in regulations prescribed by the Secretary.

“(2) DETERMINATION OF HARDSHIP.—For purposes of paragraph (1), a significant hardship shall include—

“(A) an immediate threat of adverse action,

“(B) a delay of more than 30 days in resolving taxpayer account problems,

“(C) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted, or

“(D) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

“(3) STANDARD WHERE ADMINISTRATIVE GUIDANCE NOT FOLLOWED.—In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a taxpayer assistance order in the manner most favorable to the taxpayer.”.

(d) CONFORMING AMENDMENTS RELATING TO NATIONAL TAXPAYER ADVOCATE.—

(1) The following provisions are each amended by striking “Taxpayer Advocate” each place it appears and inserting “National Taxpayer Advocate”:

(A) Section 6323(j)(1)(D) (relating to withdrawal of notice in certain circumstances).

(B) Section 6343(d)(2)(D) (relating to return of property in certain cases).

(C) Section 7811(b)(2)(D) (relating to terms of a Taxpayer Assistance Order).

(D) Section 7811(c) (relating to authority to modify or rescind).

(E) Section 7811(d)(2) (relating to suspension of running of period of limitation).

(F) Section 7811(e) (relating to independent action of Taxpayer Advocate).

(G) Section 7811(f) (relating to Taxpayer Advocate).

(2) Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by striking "Taxpayer Advocate's" and inserting "National Taxpayer Advocate's".

(3) The headings of subsections (e) and (f) of section 7811 are each amended by striking "TAXPAYER ADVOCATE" and inserting "NATIONAL TAXPAYER ADVOCATE".

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7803 and inserting the following new item:

"Sec. 7803. Commissioner of Internal Revenue; other officials."

(2) Section 5109 of title 5, United States Code, is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

(3) Section 7611(f)(1) (relating to restrictions on church tax inquiries and examinations) is amended by striking "Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service" and inserting "Secretary".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) CHIEF COUNSEL.—Section 7803(b)(3) of the Internal Revenue Code of 1986, as added by this section, shall take effect on the date that is 90 days after the date of the enactment of this Act.

(3) NATIONAL TAXPAYER ADVOCATE.—Notwithstanding section 7803(c)(1)(B)(iv) of such Code, as added by this section, in appointing the first National Taxpayer Advocate after the date of the enactment of this Act, the Secretary of the Treasury—

(A) shall not appoint any individual who was an officer or employee of the Internal Revenue Service at any time during the 2-year period ending on the date of appointment, and

(B) need not consult with the Internal Revenue Service Oversight Board if the Oversight Board has not been appointed.

(4) CURRENT OFFICERS.—

(A) In the case of an individual serving as Commissioner of Internal Revenue on the date of the enactment of this Act who was appointed to such position before such date, the 5-year term required by section 7803(a)(1) of such Code, as added by this section, shall begin as of the date of such appointment.

(B) Clauses (ii), (iii), and (iv) of section 7803(c)(1)(B) of such Code, as added by this section, shall not apply to the individual serving as Taxpayer Advocate on the date of the enactment of this Act.

SEC. 1103. TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.

(a) ESTABLISHMENT OF 2 INSPECTORS GENERAL IN THE DEPARTMENT OF THE TREASURY.—Section 2 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking the matter following paragraph (3) and inserting the following:

"there is established—

"(A) in each of such establishments an office of Inspector General, subject to subparagraph (B); and

"(B) in the establishment of the Department of the Treasury—

"(i) an Office of Inspector General of the Department of the Treasury; and

"(ii) an Office of Treasury Inspector General for Tax Administration."

(b) AMENDMENTS TO SECTION 8D OF THE INSPECTOR GENERAL ACT OF 1978.—

(1) LIMITATION ON AUTHORITY OF INSPECTOR GENERAL.—Section 8D(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new paragraph:

"(4) The Secretary of the Treasury may not exercise any power under paragraph (1) or (2) with respect to the Treasury Inspector General for Tax Administration."

(2) DUTIES OF INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY; RELATIONSHIP TO THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 8D(b) of such Act is amended—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following new paragraphs:

"(2) The Inspector General of the Department of the Treasury shall exercise all duties and responsibilities of an Inspector General for the Department of the Treasury other than the duties and responsibilities exercised by the Treasury Inspector General for Tax Administration.

"(3) The Secretary of the Treasury shall establish procedures under which the Inspector General of the Department of the Treasury and the Treasury Inspector General for Tax Administration will—

"(A) determine how audits and investigations are allocated in cases of overlapping jurisdiction, and

"(B) provide for coordination, cooperation, and efficiency in the conduct of such audits and investigations."

(3) ACCESS TO RETURNS AND RETURN INFORMATION.—Section 8D(e) of such Act is amended—

(A) in paragraph (1), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration";

(B) in paragraph (2), by striking all beginning with "(2)" through subparagraph (B);

(C)(i) by redesignating subparagraph (C) of paragraph (2) as paragraph (2) of such subsection; and

(ii) in such redesignated paragraph (2), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration"; and

(D)(i) by redesignating subparagraph (D) of such paragraph as paragraph (3) of such subsection; and

(ii) in such redesignated paragraph (3), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration".

(4) EFFECT ON CERTAIN FINAL DECISIONS OF THE SECRETARY.—Section 8D(f) of such Act is amended by striking "Inspector General" and inserting "Inspector General of the Department of the Treasury or the Treasury Inspector General for Tax Administration".

(5) REPEAL OF LIMITATION ON REPORTS TO THE ATTORNEY GENERAL.—Section 8D of such Act is amended by striking subsection (g).

(6) TRANSMISSION OF REPORTS.—Section 8D(h) of such Act is amended—

(A) by striking "(h)" and inserting "(g)(1)";

(B) by striking "and the Committees on Government Operations and Ways and Means of the House of Representatives" and inserting "and the Committees on Government Reform and Oversight and Ways and Means of the House of Representatives"; and

(C) by adding at the end the following new paragraph:

"(2) Any report made by the Treasury Inspector General for Tax Administration that is required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such subsection, to the Internal Revenue Service Oversight Board and the Commissioner of Internal Revenue."

(7) TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 8D of the Act is amended by adding at the end the following new subsections:

"(h) The Treasury Inspector General for Tax Administration shall exercise all duties and responsibilities of an Inspector General of an establishment with respect to the Department of the Treasury and the Secretary of the Treasury

on all matters relating to the Internal Revenue Service. The Treasury Inspector General for Tax Administration shall have sole authority under this Act to conduct an audit or investigation of the Internal Revenue Service Oversight Board and the Chief Counsel for the Internal Revenue Service.

"(i) In addition to the requirements of the first sentence of section 3(a), the Treasury Inspector General for Tax Administration should have demonstrated ability to lead a large and complex organization.

"(j) An individual appointed to the position of Treasury Inspector General for Tax Administration, the Assistant Inspector General for Auditing of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(1), the Assistant Inspector General for Investigations of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(2), or any position of Deputy Inspector General of the Office of the Treasury Inspector General for Tax Administration may not be an employee of the Internal Revenue Service—

"(1) during the 2-year period preceding the date of appointment to such position; or

"(2) during the 5-year period following the date such individual ends service in such position.

"(k)(1) In addition to the duties and responsibilities exercised by an inspector general of an establishment, the Treasury Inspector General for Tax Administration—

"(A) shall have the duty to enforce criminal provisions under section 7608(b) of the Internal Revenue Code of 1986;

"(B) in addition to the functions authorized under section 7608(b)(2) of such Code, may carry firearms;

"(C) shall be responsible for protecting the Internal Revenue Service against external attempts to corrupt or threaten employees of the Internal Revenue Service, but shall not be responsible for the conducting of background checks and the providing of physical security; and

"(D) may designate any employee in the Office of the Treasury Inspector General for Tax Administration to enforce such laws and perform such functions referred to under subparagraphs (A), (B), and (C).

"(2)(A) In performing a law enforcement function under paragraph (1), the Treasury Inspector General for Tax Administration shall report any reasonable grounds to believe there has been a violation of Federal criminal law to the Attorney General at an appropriate time as determined by the Treasury Inspector General for Tax Administration, notwithstanding section 4(d).

"(B) In the administration of section 5(d) and subsection (g)(2) of this section, the Secretary of the Treasury may transmit the required report with respect to the Treasury Inspector General for Tax Administration at an appropriate time as determined by the Secretary, if the problem, abuse, or deficiency relates to—

"(i) the performance of a law enforcement function under paragraph (1); and

"(ii) sensitive information concerning matters under subsection (a)(1)(A) through (F).

"(3) Nothing in this subsection shall be construed to affect the authority of any other person to carry out or enforce any provision specified in paragraph (1).

"(1)(1) The Commissioner of Internal Revenue or the Internal Revenue Service Oversight Board may request, in writing, the Treasury Inspector General for Tax Administration to conduct an audit or investigation relating to the Internal Revenue Service. If the Treasury Inspector General for Tax Administration determines not to conduct such audit or investigation, the Inspector General shall timely provide a written explanation for such determination to the person making the request.

"(2)(A) Any final report of an audit conducted by the Treasury Inspector General for

Tax Administration shall be timely submitted by the Inspector General to the Commissioner of Internal Revenue and the Internal Revenue Service Oversight Board.

(B) The Treasury Inspector General for Tax Administration shall periodically submit to the Commissioner and Board a list of investigations for which a final report has been completed by the Inspector General and shall provide a copy of any such report upon request of the Commissioner or Board.

(C) This paragraph applies regardless of whether the applicable audit or investigation is requested under paragraph (1).

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Section 9(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in subparagraph (L)—

(A) by inserting “(i)” after “(L)”;

(B) by inserting “and” after the semicolon; and
(C) by adding at the end the following new clause:

“(i) of the Treasury Inspector General for Tax Administration, effective 180 days after the date of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, the Office of Chief Inspector of the Internal Revenue Service;”.

(2) TERMINATION OF OFFICE OF CHIEF INSPECTOR.—Effective upon the transfer of functions under the amendment made by paragraph (1), the Office of Chief Inspector of the Internal Revenue Service is terminated.

(3) RETENTION OF CERTAIN INTERNAL AUDIT PERSONNEL.—In making the transfer under the amendment made by paragraph (1), the Commissioner of Internal Revenue shall designate and retain an appropriate number (not in excess of 300) of internal audit full-time equivalent employee positions necessary for management relating to the Internal Revenue Service.

(4) ADDITIONAL PERSONNEL TRANSFERS.—Effective 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall transfer 21 full-time equivalent positions from the Office of the Inspector General of the Department of the Treasury to the Office of the Treasury Inspector General for Tax Administration.

(d) AUDITS AND REPORTS OF AGENCY FINANCIAL STATEMENTS.—Subject to section 3521(g) of title 31, United States Code—

(1) the Inspector General of the Department of the Treasury shall, subject to paragraph (2)—

(A) audit each financial statement in accordance with section 3521(e) of such title; and
(B) prepare and submit each report required under section 3521(f) of such title; and

(2) the Treasury Inspector General for Tax Administration shall—

(A) audit that portion of each financial statement referred to under paragraph (1)(A) that relates to custodial and administrative accounts of the Internal Revenue Service; and

(B) prepare that portion of each report referred to under paragraph (1)(B) that relates to custodial and administrative accounts of the Internal Revenue Service.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TRANSFER OF FUNCTIONS.—Section 8D(b) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “and the internal audits and internal investigations performed by the Office of Assistant Commissioner (Inspection) of the Internal Revenue Service”.

(2) AMENDMENTS RELATING TO REFERENCES TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY.—

(A) LIMITATION ON AUTHORITY.—Section 8D(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(i) in the first sentence of paragraph (1), by inserting “of the Department of the Treasury” after “Inspector General”;

(ii) in paragraph (2), by inserting “of the Department of the Treasury” after “prohibit the Inspector General”; and

(iii) in paragraph (3)—

(1) in the first sentence, by inserting “of the Department of the Treasury” after “notify the Inspector General”; and

(II) in the second sentence, by inserting “of the Department of the Treasury” after “notice, the Inspector General”.

(B) DUTIES.—Section 8D(b) of such Act is amended in the second sentence by inserting “of the Department of the Treasury” after “Inspector General”.

(C) AUDITS AND INVESTIGATIONS.—Section 8D(c) and (d) of such Act are amended by inserting “of the Department of the Treasury” after “Inspector General” each place it appears.

(3) REFERENCES.—The second section 8G of the Inspector General Act of 1978 (relating to rule of construction of special provisions) is amended—

(A) by striking “SEC. 8G” and inserting “SEC. 8H”;

(B) by striking “or 8E” and inserting “8E or 8F”; and

(C) by striking “section 8F(a)” and inserting “section 8G(a)”.

(4) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 7608(b)(1) is amended by striking “or of the Internal Security Division”.

SEC. 1104. OTHER PERSONNEL.

(a) IN GENERAL.—Section 7804 (relating to the effect of reorganization plans) is amended to read as follows:

“SEC. 7804. OTHER PERSONNEL.

“(a) APPOINTMENT AND SUPERVISION.—Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

“(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—Unless otherwise prescribed by the Secretary—

“(1) DESIGNATION OF POST OF DUTY.—The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

“(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.—The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

“(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.”.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 6344 is amended by striking “section 7803(d)” and inserting “section 7804(c)”.

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7804 and inserting the following new item:

“Sec. 7804. Other personnel.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1105. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

(a) IN GENERAL.—Part I of subchapter A of chapter 75 (relating to crimes, other offenses, and forfeitures) is amended by adding after section 7216 the following new section:

“SEC. 7217. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

“(a) PROHIBITION.—It shall be unlawful for any applicable person to request, directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.

“(b) REPORTING REQUIREMENT.—Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Treasury Inspector General for Tax Administration.

“(c) EXCEPTIONS.—Subsection (a) shall not apply to any written request made—

“(1) to an applicable person by or on behalf of the taxpayer and forwarded by such applicable person to the Internal Revenue Service,

“(2) by an applicable person for disclosure of return or return information under section 6103 if such request is made in accordance with the requirements of such section, or

“(3) by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

“(d) PENALTY.—Any person who willfully violates subsection (a) or fails to report under subsection (b) shall be punished upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

“(e) APPLICABLE PERSON.—For purposes of this section, the term ‘applicable person’ means—

“(1) the President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President, and

“(2) any individual (other than the Attorney General of the United States) serving in a position specified in section 5312 of title 5, United States Code.”.

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 75 is amended by adding after the item relating to section 7216 the following new item:

“Sec. 7217. Prohibition on executive branch influence over taxpayer audits and other investigations.”.

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

Subtitle C—Personnel Flexibilities

SEC. 1201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

“Subpart I—Miscellaneous

“CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

“Sec.

“9501. Internal Revenue Service personnel flexibilities.

“9502. Pay authority for critical positions.

“9503. Streamlined critical pay authority.

“9504. Recruitment, retention, relocation incentives, and relocation expenses.

“9505. Performance awards for senior executives.

“9506. Limited appointments to career reserved Senior Executive Service positions.

“9507. Streamlined demonstration project authority.

“9508. General workforce performance management system.

“9509. General workforce classification and pay.

“9510. General workforce staffing.

“§9501. Internal Revenue Service personnel flexibilities

“(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

“(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

“(2) provisions relating to preference eligibles;

“(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

“(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

“(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

“(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

“(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

“§9502. Pay authority for critical positions

“(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Internal Revenue Service, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

“(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

“§9503. Streamlined critical pay authority

“(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, for a period of 10 years after the date of enactment of this section, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

“(1) the positions—

“(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

“(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

“(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

“(3) the number of such positions does not exceed 40 at any one time;

“(4) designation of such positions are approved by the Secretary of the Treasury;

“(5) the terms of such appointments are limited to no more than 4 years;

“(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

“(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

“(8) all such positions are excluded from the collective bargaining unit.

“(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

“§9504. Recruitment, retention, relocation incentives, and relocation expenses

“(a) For a period of 10 years after the date of enactment of this section and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

“(b) For a period of 10 years after the date of enactment of this section, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

“§9505. Performance awards for senior executives

“(a) For a period of 10 years after the date of enactment of this section, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive's performance.

“(b) In evaluating an executive's performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1996 (Public Law 104-106; 110 Stat. 679), Revenue Procedure 64-22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

“(c) Any award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Secretary of the Treasury.

“(d) Notwithstanding section 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives in the Internal Revenue Service. Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Internal Revenue Service during the preceding fiscal year. The Internal Revenue Service shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the Internal Revenue Service.

“(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.

“§9506. Limited appointments to career reserved Senior Executive Service positions

“(a) In the application of section 3132, a ‘career reserved position’ in the Internal Revenue Service means a position designated under section 3132(b) which may be filled only by—

“(1) a career appointee, or

“(2) a limited emergency appointee or a limited term appointee—

“(A) who, immediately upon entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

“(B) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management.

“(b)(1) The number of positions described under subsection (a) which are filled by an appointee as described under paragraph (2) of such subsection may not exceed 10 percent of the total number of Senior Executive Service positions in the Internal Revenue Service.

“(2) Notwithstanding section 3132—

“(A) the term of an appointee described under subsection (a)(2) may be for any period not to exceed 3 years; and

“(B) such an appointee may serve—

“(i) 2 such terms; or

“(ii) 2 such terms in addition to any unexpired term applicable at the time of appointment.

“§9507. Streamlined demonstration project authority

“(a) The exercise of any of the flexibilities under sections 9502 through 9510 shall not affect the authority of the Secretary of the Treasury to implement for the Internal Revenue Service a demonstration project subject to chapter 47, as provided in subsection (b).

“(b) In applying section 4703 to a demonstration project described in section 4701(a)(4) which involves the Internal Revenue Service—

“(1) section 4703(b)(1) shall be deemed to read as follows:

“(1) develop a plan for such project which describes its purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method of evaluating the project;”

“(2) section 4703(b)(3) shall not apply;

“(3) the 180-day notification period in section 4703(b)(4) shall be deemed to be a notification period of 30 days;

“(4) section 4703(b)(6) shall be deemed to read as follows:

“(6) provides each House of Congress with the final version of the plan.”;

“(5) section 4703(c)(1) shall be deemed to read as follows:

“(1) subchapter V of chapter 63 or subpart G of part III of this title;”

“(6) the requirements of paragraphs (1)(A) and (2) of section 4703(d) shall not apply; and

“(7) notwithstanding section 4703(d)(1)(B), based on an evaluation as provided in section 4703(h), the Office of Personnel Management and the Secretary of the Treasury, except as otherwise provided by this subsection, may waive the termination date of a demonstration project under section 4703(d).

“(c) At least 90 days before waiving the termination date under subsection (b)(7), the Office of Personnel Management shall publish in the Federal Register a notice of its intention to waive the termination date and shall inform in writing both Houses of Congress of its intention.

“§9508. General workforce performance management system

“(a) In lieu of a performance appraisal system established under section 4302, the Secretary of the Treasury shall, within 1 year after the date of enactment of this section, establish for the Internal Revenue Service a performance management system that—

“(1) maintains individual accountability by—

“(A) establishing 1 or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance, and communicating such retention standards to employees;

“(B) making periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

“(C) taking actions, in accordance with applicable laws and regulations, with respect to any

employee whose performance does not meet established retention standards, including denying any increases in basic pay, promotions, and credit for performance under section 3502, and taking 1 or more of the following actions:

“(i) Reassignment.

“(ii) An action under chapter 43 or chapter 75 of this title.

“(iii) Any other appropriate action to resolve the performance problem; and

“(2) except as provided under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, strengthens the system's effectiveness by—

“(A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the Internal Revenue Service's performance planning procedures, including those established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1996 (Public Law 104-106; 110 Stat. 679), Revenue Procedure 64-22 (as in effect on July 30, 1997), and taxpayer service surveys, and communicating such goals or objectives to employees;

“(B) using such goals and objectives to make performance distinctions among employees or groups of employees; and

“(C) using performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

“(b)(1) For purposes of subsection (a)(2), the term ‘performance assessment’ means a determination of whether or not retention standards established under subsection (a)(1)(A) are met, and any additional performance determination made on the basis of performance goals and objectives established under subsection (a)(2)(A).

“(2) For purposes of this title, the term ‘unacceptable performance’ with respect to an employee of the Internal Revenue Service covered by a performance management system established under this section means performance of the employee which fails to meet a retention standard established under this section.

“(c)(1) The Secretary of the Treasury may establish an awards program designed to provide incentives for and recognition of organizational, group, and individual achievements by providing for granting awards to employees who, as individuals or members of a group, contribute to meeting the performance goals and objectives established under this chapter by such means as a superior individual or group accomplishment, a documented productivity gain, or sustained superior performance.

“(2) A cash award under subchapter I of chapter 45 may be granted to an employee of the Internal Revenue Service without the need for any approval under section 4502(b).

“(d)(1) In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, ‘30 days’ may be deemed to be ‘15 days’.

“(2) Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

“§9509. General workforce classification and pay

“(a) For purposes of this section, the term ‘broad-banded system’ means a system for grouping positions for pay, job evaluation, and other purposes that is different from the system established under chapter 51 and subchapter III of chapter 53 as a result of combining grades and related ranges of rates of pay in 1 or more occupational series.

“(b)(1)(A) The Secretary of the Treasury may, subject to criteria to be prescribed by the Office of Personnel Management, establish 1 or more broad-banded systems covering all or any portion of the Internal Revenue Service workforce.

“(B) With the approval of the Office of Personnel Management, a broad-banded system es-

tablished under this section may either include or consist of positions that otherwise would be subject to subchapter IV of chapter 53 or section 5376.

“(2) The Office of Personnel Management may require the Secretary of the Treasury to submit information relating to broad-banded systems at the Internal Revenue Service.

“(3) Except as otherwise provided under this section, employees under a broad-banded system shall continue to be subject to the laws and regulations covering employees under the pay system that otherwise would apply to such employees.

“(4) The criteria to be prescribed by the Office of Personnel Management shall, at a minimum—

“(A) ensure that the structure of any broad-banded system maintains the principle of equal pay for substantially equal work;

“(B) establish the minimum and maximum number of grades that may be combined into pay bands;

“(C) establish requirements for setting minimum and maximum rates of pay in a pay band;

“(D) establish requirements for adjusting the pay of an employee within a pay band;

“(E) establish requirements for setting the pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and

“(F) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system.

“(c) With the approval of the Office of Personnel Management and in accordance with a plan for implementation submitted by the Secretary of the Treasury, the Secretary may, with respect to Internal Revenue Service employees who are covered by a broad-banded system established under this section, provide for variations from the provisions of subchapter VI of chapter 53.

“§9510. General workforce staffing

“(a)(1) Except as otherwise provided by this section, an employee of the Internal Revenue Service may be selected for a permanent appointment in the competitive service in the Internal Revenue Service through internal competitive promotion procedures if—

“(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments;

“(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

“(C) the employee's performance under such term appointment or appointments met established retention standards, or, if not covered by a performance management system established under section 9508, was rated at the fully successful level or higher (or equivalent thereof); and

“(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

“(2) An appointment under this section may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

“(b)(1) Notwithstanding subchapter I of chapter 33, the Secretary of the Treasury may establish category rating systems for evaluating applicants for Internal Revenue Service positions in the competitive service under which qualified candidates are divided into 2 or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings.

“(2) Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the position to be filled.

“(3) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS-9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

“(4) An appointing authority may select any applicant from the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories.

“(5) Notwithstanding paragraph (4), the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

“(c) The Secretary of the Treasury may detail employees among the offices of the Internal Revenue Service without regard to the 120-day limitation in section 3341(b).

“(d) Notwithstanding any other provision of law, the Secretary of the Treasury may establish a probationary period under section 3321 of up to 3 years for Internal Revenue Service positions if the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

“(e) Nothing in this section exempts the Secretary of the Treasury from—

“(1) any employment priority established under direction of the President for the placement of surplus or displaced employees; or

“(2) any obligation under a court order or decree relating to the employment practices of the Internal Revenue Service or the Department of the Treasury.”.

(b) CLERICAL AMENDMENT.—The table of sections for part III of title 5, United States Code, is amended by adding at the end the following new items:

“Subpart I—Miscellaneous

“95. Personnel flexibilities relating to the Internal Revenue Service 9501”. SEC. 1202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITION.—In this section, the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Internal Revenue Service serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or

any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) **AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**—

(1) **IN GENERAL.**—The Commissioner of Internal Revenue may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to reorganize the Internal Revenue Service under section 1001.

(2) **AMOUNT AND TREATMENT OF PAYMENTS.**—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed \$25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2003;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) **ADDITIONAL INTERNAL REVENUE SERVICE CONTRIBUTIONS TO THE RETIREMENT FUND.**—

(1) **IN GENERAL.**—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Internal Revenue Service shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) **DEFINITION.**—In paragraph (1), the term "final basic pay", with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(d) **EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.**—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Internal Revenue Service.

(e) **EFFECT ON INTERNAL REVENUE SERVICE EMPLOYMENT LEVELS.**—

(1) **INTENDED EFFECT.**—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in the Internal Revenue Service.

(2) **USE OF VOLUNTARY SEPARATIONS.**—The Internal Revenue Service may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 1203. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

(a) **IN GENERAL.**—Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) **ACTS OR OMISSIONS.**—The acts or omissions referred to under subsection (a) are—

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—

(A) any right under the Constitution of the United States; or

(B) any civil right established under—

(i) title VI or VII of the Civil Rights Act of 1964;

(ii) title IX of the Education Amendments of 1972;

(iii) the Age Discrimination in Employment Act of 1967;

(iv) the Age Discrimination Act of 1975;

(v) section 501 or 504 of the Rehabilitation Act of 1973; or

(vi) title I of the Americans with Disabilities Act of 1990;

(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

(5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;

(6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;

(7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;

(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and

(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

(c) **DETERMINATION OF COMMISSIONER.**—

(1) **IN GENERAL.**—The Commissioner of Internal Revenue may take a personnel action other than termination for an act or omission under subsection (a).

(2) **DISCRETION.**—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner of Internal Revenue and may not be delegated to any other officer. The Commissioner of Internal Revenue, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner of Internal Revenue for a determination by the Commissioner under paragraph (1).

(3) **NO APPEAL.**—Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding.

(d) **DEFINITION.**—For purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity receiving Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

SEC. 1204. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

(a) **IN GENERAL.**—The Internal Revenue Service shall not use records of tax enforcement results—

(1) to evaluate employees; or

(2) to impose or suggest production quotas or goals with respect to such employees.

(b) **TAXPAYER SERVICE.**—The Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.

(c) **CERTIFICATION.**—Each appropriate supervisor shall certify quarterly by letter to the Commissioner of Internal Revenue whether or not tax enforcement results are being used in a manner prohibited by subsection (a).

(d) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 6231 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647; 102 Stat. 3734) is repealed.

(e) **EFFECTIVE DATE.**—This section shall apply to evaluations conducted on or after the date of the enactment of this Act.

SEC. 1205. EMPLOYEE TRAINING PROGRAM.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Commissioner of Internal Revenue shall implement an employee training program and shall submit an employee training plan to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(b) **CONTENTS.**—The plan submitted under subsection (a) shall—

(1) detail a comprehensive employee training program to ensure adequate customer service training;

(2) detail a schedule for training and the fiscal years during which the training will occur;

(3) detail the funding of the program and relevant information to demonstrate the priority and commitment of resources to the plan;

(4) review the organizational design of customer service;

(5) provide for the implementation of a performance development system; and

(6) provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities.

TITLE II—ELECTRONIC FILING

SEC. 2001. ELECTRONIC FILING OF TAX AND INFORMATION RETURNS.

(a) **IN GENERAL.**—It is the policy of Congress that—

(1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns;

(2) it should be the goal of the Internal Revenue Service to have at least 80 percent of all such returns filed electronically by the year 2007; and

(3) the Internal Revenue Service should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

(b) **STRATEGIC PLAN.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the "Secretary") shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next 10 years while maintaining

processing times for paper returns at 40 days. To the extent practicable, such plan shall provide that all returns prepared electronically for taxable years beginning after 2001 shall be filed electronically.

(2) **ELECTRONIC COMMERCE ADVISORY GROUP.**—To ensure that the Secretary receives input from the private sector in the development and implementation of the plan required by paragraph (1), the Secretary shall convene an electronic commerce advisory group to include representatives from the small business community and from the tax practitioner, preparer, and computerized tax processor communities and other representatives from the electronic filing industry.

(c) **PROMOTION OF ELECTRONIC FILING AND INCENTIVES.**—Section 6011 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **PROMOTION OF ELECTRONIC FILING.**—

“(1) **IN GENERAL.**—The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

“(2) **INCENTIVES.**—The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.”

(d) **ANNUAL REPORTS.**—Not later than June 30 of each calendar year after 1998, the Chairperson of the Internal Revenue Service Oversight Board, the Secretary of the Treasury, and the Chairperson of the electronic commerce advisory group established under subsection (b)(2) shall report to the Committees on Ways and Means, Appropriations, Government Reform and Oversight, and Small Business of the House of Representatives and the Committees on Finance, Appropriations, Governmental Affairs, and Small Business of the Senate on—

(1) the progress of the Internal Revenue Service in meeting the goal of receiving electronically 80 percent of tax and information returns by 2007;

(2) the status of the plan required by subsection (b);

(3) the legislative changes necessary to assist the Internal Revenue Service in meeting such goal; and

(4) the effects on small businesses and the self-employed of electronically filing tax and information returns.

SEC. 2002. DUE DATE FOR CERTAIN INFORMATION RETURNS.

(a) **INFORMATION RETURNS FILED ELECTRONICALLY.**—Section 6071 (relating to time for filing returns and other documents) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

“(b) **ELECTRONICALLY FILED INFORMATION RETURNS.**—Returns made under subparts B and C of part III of this subchapter which are filed electronically shall be filed on or before March 31 of the year following the calendar year to which such returns relate.”

(b) **STUDY RELATING TO TIME FOR PROVIDING NOTICE TO RECIPIENTS.**—

(1) **IN GENERAL.**—The Secretary of the Treasury shall conduct a study evaluating the effect of extending the deadline for providing statements to persons with respect to whom information is required to be furnished under subparts B and C of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (other than section 6051 of such Code) from January 31 to February 15 of the year in which the return to which the statement relates is required to be filed.

(2) **REPORT.**—Not later than June 30, 1999, the Secretary of the Treasury shall submit a report on the study under paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to returns required to be filed after December 31, 1999.

SEC. 2003. PAPERLESS ELECTRONIC FILING.

(a) **IN GENERAL.**—Section 6061 (relating to signing of returns and other documents) is amended—

(1) by striking “Except as otherwise provided by” and inserting the following:

“(a) **GENERAL RULE.**—Except as otherwise provided by subsection (b) and”, and

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

“(b) **ELECTRONIC SIGNATURES.**—

“(1) **IN GENERAL.**—The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may—

“(A) waive the requirement of a signature for,

or

“(B) provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws and regulations.

“(2) **TREATMENT OF ALTERNATIVE METHODS.**—Notwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed.

“(3) **PUBLISHED GUIDANCE.**—The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements or any method adopted under paragraph (1).”

(b) **ACKNOWLEDGMENT OF ELECTRONIC FILING.**—Section 7502(c) is amended to read as follows:

“(c) **REGISTERED AND CERTIFIED MAILING; ELECTRONIC FILING.**—

“(1) **REGISTERED MAIL.**—For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—

“(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

“(B) the date of registration shall be deemed the postmark date.

“(2) **CERTIFIED MAIL; ELECTRONIC FILING.**—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.”

(c) **ESTABLISHMENT OF PROCEDURES FOR OTHER INFORMATION.**—In the case of taxable periods beginning after December 31, 1999, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to accept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper.

(d) **INTERNET AVAILABILITY.**—In the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database at approximately the same time such records are available to the public in paper form. In addition, in the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in

a searchable database at approximately the same time such guidance is available to the public in paper form.

(e) **PROCEDURES FOR AUTHORIZING DISCLOSURE ELECTRONICALLY.**—The Secretary shall establish procedures for any taxpayer to authorize, on an electronically filed return, the Secretary to disclose information under section 6103(c) of the Internal Revenue Code of 1986 to the preparer of the return.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 2004. RETURN-FREE TAX SYSTEM.

(a) **IN GENERAL.**—The Secretary of the Treasury or the Secretary's delegate shall develop procedures for the implementation of a return-free tax system under which appropriate individuals would be permitted to comply with the Internal Revenue Code of 1986 without making the return required under section 6012 of such Code for taxable years beginning after 2007.

(b) **REPORT.**—Not later than June 30 of each calendar year after 1999, the Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) what additional resources the Internal Revenue Service would need to implement such a system,

(2) the changes to the Internal Revenue Code of 1986 that could enhance the use of such a system,

(3) the procedures developed pursuant to subsection (a), and

(4) the number and classes of taxpayers that would be permitted to use the procedures developed pursuant to subsection (a).

SEC. 2005. ACCESS TO ACCOUNT INFORMATION.

(a) **IN GENERAL.**—Not later than December 31, 2006, the Secretary of the Treasury or the Secretary's delegate shall develop procedures under which a taxpayer filing returns electronically (and their designees under section 6103(c) of the Internal Revenue Code of 1986) would be able to review the taxpayer's account electronically, but only if all necessary safeguards to ensure the privacy of such account information are in place.

(b) **REPORT.**—Not later than December 31, 2003, the Secretary of the Treasury shall report on the progress the Secretary is making on the development of procedures under subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—TAXPAYER PROTECTION AND RIGHTS

SEC. 3000. SHORT TITLE.

This title may be cited as the “Taxpayer Bill of Rights 3”.

Subtitle A—Burden of Proof

SEC. 3001. BURDEN OF PROOF.

(a) **IN GENERAL.**—Chapter 76 (relating to judicial proceedings) is amended by adding at the end the following new subchapter:

“Subchapter E—Burden of Proof

“Sec. 7491. Burden of proof.

“SEC. 7491. BURDEN OF PROOF.

“(a) **BURDEN SHIFTS WHERE TAXPAYER PRODUCES CREDIBLE EVIDENCE.**—

“(1) **GENERAL RULE.**—If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

“(2) **LIMITATIONS.**—Paragraph (1) shall apply with respect to an issue only if—

“(A) the taxpayer has complied with the requirements under this title to substantiate any item,

“(B) the taxpayer has maintained all records required under this title and has cooperated

with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews, and

“(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

“(3) COORDINATION.—Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

“(b) USE OF STATISTICAL INFORMATION ON UNRELATED TAXPAYERS.—In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

“(c) PENALTIES.—Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.”.

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 76 is amended by adding at the end the following new item:

“SUBCHAPTER E. Burden of proof.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act.

(2) TAXABLE PERIODS OR EVENTS AFTER DATE OF ENACTMENT.—In any case in which there is no examination, such amendments shall apply to court proceedings arising in connection with taxable periods or events beginning or occurring after such date of enactment.

Subtitle B—Proceedings by Taxpayers

SEC. 3101. EXPANSION OF AUTHORITY TO AWARD COSTS AND CERTAIN FEES.

(a) INCREASE IN ATTORNEY'S FEES.—

(1) INCREASE IN HOURLY AMOUNT.—Clause (iii) of section 7430(c)(1)(B) (relating to reasonable litigation costs) is amended by striking “\$110” and inserting “\$125”.

(2) AWARD OF HIGHER ATTORNEY'S FEES BASED ON COMPLEXITY OF ISSUES.—Clause (iii) of section 7430(c)(1)(B) (relating to the award of costs and certain fees) is amended by inserting “the difficulty of the issues presented in the case, or the local availability of tax expertise,” before “justifies a higher rate”.

(b) AWARD OF ADMINISTRATIVE COSTS INCURRED AFTER 30-DAY LETTER.—Paragraph (2) of section 7430(c) is amended by striking the last sentence and inserting the following new flush sentence:

“Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, (ii) the date of the notice of deficiency, or (iii) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.”.

(c) AWARD OF FEES FOR CERTAIN ADDITIONAL SERVICES.—Paragraph (3) of section 7430(c) is amended to read as follows:

“(3) ATTORNEYS FEES.—

“(A) IN GENERAL.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

“(B) PRO BONO SERVICES.—The court may award reasonable attorneys fees under subsection (a) in excess of the attorneys fees paid or incurred if such fees are less than the reasonable attorneys fees because an individual is representing the prevailing party for no fee or for

a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This subparagraph shall apply only if such award is paid to such individual or such individual's employer.”.

(d) DETERMINATION OF WHETHER POSITION OF UNITED STATES IS SUBSTANTIALLY JUSTIFIED.—Subparagraph (B) of section 7430(c)(4) is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

“(iii) EFFECT OF LOSING ON SUBSTANTIALLY SIMILAR ISSUES.—In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues.”.

(e) TAXPAYER TREATED AS PREVAILING IF JUDGMENT IS LESS THAN TAXPAYER'S OFFER.—

(1) IN GENERAL.—Section 7430(c)(4) (defining prevailing party) is amended by adding at the end the following new subparagraph:

“(E) SPECIAL RULES WHERE JUDGMENT LESS THAN TAXPAYER'S OFFER.—

“(i) IN GENERAL.—A party to a court proceeding meeting the requirements of subparagraph (A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted a qualified offer of the party under subsection (g).

“(ii) EXCEPTIONS.—This subparagraph shall not apply to—

“(I) any judgment issued pursuant to a settlement, or

“(II) any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to this title, and any action to restrain disclosure under section 6110(f).

“(iii) SPECIAL RULES.—If this subparagraph applies to any court proceeding—

“(I) the determination under clause (i) shall be made by reference to the last qualified offer made with respect to the tax liability at issue in the proceeding, and

“(II) reasonable administrative and litigation costs shall only include costs incurred on and after the date of such offer.

“(iv) COORDINATION.—This subparagraph shall not apply to a party which is a prevailing party under any other provision of this paragraph.”.

(2) QUALIFIED OFFER.—Section 7430 is amended by adding at the end the following new subsection:

“(g) QUALIFIED OFFER.—For purposes of subsection (c)(4)—

“(1) IN GENERAL.—The term ‘qualified offer’ means a written offer which—

“(A) is made by the taxpayer to the United States during the qualified offer period,

“(B) specifies the offered amount of the taxpayer's liability (determined without regard to interest),

“(C) is designated at the time it is made as a qualified offer for purposes of this section, and

“(D) remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

“(2) QUALIFIED OFFER PERIOD.—For purposes of this subsection, the term ‘qualified offer period’ means the period—

“(A) beginning on the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, and

“(B) ending on the date which is 30 days before the date the case is first set for trial.”.

(f) AWARD OF ATTORNEYS FEES IN UNAUTHORIZED INSPECTION AND DISCLOSURE CASES.—Sec-

tion 7431(c) (relating to damages) is amended by striking the period at the end of paragraph (2) and inserting “, plus”, and by adding at the end the following new paragraph:

“(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred (and, in the case of the amendment made by subsection (c), services performed) more than 180 days after the date of the enactment of this Act.

SEC. 3102. CIVIL DAMAGES FOR COLLECTION ACTIONS.

(a) EXTENSION TO NEGLIGENCE ACTIONS.—

(1) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended—

(A) in subsection (a), by inserting “, or by reason of negligence,” after “recklessly or intentionally”, and

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by inserting “(\$100,000, in the case of negligence)” after “\$1,000,000”, and

(ii) in paragraph (1), by inserting “or negligent” after “reckless or intentional”.

(2) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—Paragraph (1) of section 7433(d) is amended to read as follows:

“(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.”.

(b) DAMAGES ALLOWED IN CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.—Section 7426 is amended by redesignating subsection (h) as subsection (i) and by adding after subsection (g) the following new subsection:

“(h) RECOVERY OF DAMAGES PERMITTED IN CERTAIN CASES.—

“(1) IN GENERAL.—Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$1,000,000 (\$100,000 in the case of negligence) or the sum of—

“(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)), and

“(B) the costs of the action.

“(2) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED; MITIGATION; PERIOD.—The rules of section 7433(d) shall apply for purposes of this subsection.

“(3) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.”.

(c) CIVIL DAMAGES FOR IRS VIOLATIONS OF BANKRUPTCY PROCEDURES.—

(1) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended by adding at the end the following new subsection:

“(e) ACTIONS FOR VIOLATIONS OF CERTAIN BANKRUPTCY PROCEDURES.—

“(1) IN GENERAL.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

“(2) REMEDY TO BE EXCLUSIVE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

“(B) CERTAIN OTHER ACTIONS PERMITTED.—Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

“(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430, and

“(ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.”.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 7433 is amended by inserting “or petition filed under subsection (e)” after “subsection (a)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 3103. INCREASE IN SIZE OF CASES PERMITTED ON SMALL CASE CALENDAR.

(a) IN GENERAL.—Section 7463 (relating to disputes involving \$10,000 or less) is amended by striking “\$10,000” each place it appears (including the section heading) and inserting “\$50,000”.

(b) CONFORMING AMENDMENTS.—

(1) Sections 7436(c)(1) and 7443A(b)(3) are each amended by striking “\$10,000” and inserting “\$50,000”.

(2) The table of sections for part II of subchapter C of chapter 76 is amended by striking “\$10,000” in the item relating to section 7463 and inserting “\$50,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

SEC. 3104. ACTIONS FOR REFUND WITH RESPECT TO CERTAIN ESTATES WHICH HAVE ELECTED THE INSTALLMENT METHOD OF PAYMENT.

(a) IN GENERAL.—Section 7422 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) SPECIAL RULE FOR ACTIONS WITH RESPECT TO ESTATES FOR WHICH AN ELECTION UNDER SECTION 6166 IS MADE.—

“(1) IN GENERAL.—The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

“(2) ESTATES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any estate if, as of the date the action is filed—

“(A) no portion of the installments payable under section 6166 have been accelerated,

“(B) all such installments the due date for which is on or before the date the action is filed have been paid,

“(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired, and

“(D) no proceeding for declaratory judgment under section 7479 is pending.

“(3) PROHIBITION ON COLLECTION OF DISALLOWED LIABILITY.—If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has

become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.”.

(b) EXTENSION OF TIME TO FILE REFUND SUIT.—Section 7479 (relating to declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166) is amended by adding at the end the following new subsection:

“(c) EXTENSION OF TIME TO FILE REFUND SUIT.—The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for refund filed after the date of the enactment of this Act.

SEC. 3105. ADMINISTRATIVE APPEAL OF ADVERSE IRS DETERMINATION OF TAX-EXEMPT STATUS OF BOND ISSUE.

The Internal Revenue Service shall amend its administrative procedures to provide that if, upon examination, the Internal Revenue Service proposes to an issuer that interest on previously issued obligations of such issuer is not excludable from gross income under section 103(a) of the Internal Revenue Code of 1986, the issuer of such obligations shall have an administrative appeal of right to a senior officer of the Internal Revenue Service Office of Appeals.

SEC. 3106. CIVIL ACTION FOR RELEASE OF ERRONEOUS LIEN.

(a) RIGHT OF SUBSTITUTION OF VALUE.—Subsection (b) of section 6325 (relating to release of lien or discharge of property) is amended by adding at the end the following new paragraph:

“(4) RIGHT OF SUBSTITUTION OF VALUE.—

“(A) IN GENERAL.—At the request of the owner of any property subject to any lien imposed by this chapter, the Secretary shall issue a certificate of discharge of such property if such owner—

“(i) deposits with the Secretary an amount of money equal to the value of the interest of the United States (as determined by the Secretary) in the property, or

“(ii) furnishes a bond acceptable to the Secretary in a like amount.

“(B) REFUND OF DEPOSIT WITH INTEREST AND RELEASE OF BOND.—The Secretary shall refund the amount so deposited (and shall pay interest at the overpayment rate under section 6621), and shall release such bond, to the extent that the Secretary determines that—

“(i) the unsatisfied liability giving rise to the lien can be satisfied from a source other than such property, or

“(ii) the value of the interest of the United States in the property is less than the Secretary's prior determination of such value.

“(C) USE OF DEPOSIT, ETC., IF ACTION TO COUNTER LIEN NOT FILED.—If no action is filed under section 7426(a)(4) within the period prescribed therefor, the Secretary shall, within 60 days after the expiration of such period—

“(i) apply the amount deposited, or collect on such bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien, and

“(ii) refund (with interest as described in subparagraph (B)) any portion of the amount deposited which is not used to satisfy such liability.

“(D) EXCEPTION.—Subparagraph (A) shall not apply if the owner of the property is the person whose unsatisfied liability gave rise to the lien.”.

(b) CIVIL ACTION TO RELEASE ERRONEOUS LIEN.—

(1) IN GENERAL.—Subsection (a) of section 7426 (relating to civil actions by persons other than taxpayers) is amended by adding at the end the following new paragraph:

“(4) SUBSTITUTION OF VALUE.—If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.”.

(2) FORM OF RELIEF.—

(A) IN GENERAL.—Subsection (b) of section 7426 is amended by adding at the end the following new paragraph:

“(5) SUBSTITUTION OF VALUE.—If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.”.

(B) INTEREST ALLOWED ON REFUND OF DEPOSIT.—Subsection (g) of section 7426 is amended by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting “; and”, and by adding at the end the following new paragraph:

“(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.”.

(3) SUSPENSION OF RUNNING OF STATUTE OF LIMITATION.—Subsection (f) of section 6503 is amended to read as follows:

“(f) WRONGFUL SEIZURE OF OR LIEN ON PROPERTY OF THIRD PARTY.—

“(1) WRONGFUL SEIZURE.—The running of the period under section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

“(2) WRONGFUL LIEN.—In the case of any assessment for which a lien was made on any property, the running of the period under section 6502 shall be suspended for a period equal to the period beginning on the date any person becomes entitled to a certificate under section 6325(b)(4) with respect to such property and ending on the date which is 30 days after the earlier of—

“(A) the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or being refunded or released, or

“(B) the date that the judgment secured under section 7426(b)(5) becomes final.

The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the value of the interest of the United States in the property plus interest, penalties, additions to the tax, and additional amounts attributable thereto.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities

SEC. 3201. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

(a) IN GENERAL.—Subpart B of part II of subchapter A of chapter 61 is amended by inserting after section 6014 the following new section:

“SEC. 6015. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

“(a) IN GENERAL.—Notwithstanding section 6013(d)(3)—

“(1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b), and

“(2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

Any determination under this section shall be made without regard to community property laws.

“(b) PROCEDURES FOR RELIEF FROM LIABILITY APPLICABLE TO ALL JOINT FILERS.—

“(1) IN GENERAL.—Under procedures prescribed by the Secretary, if—

“(A) a joint return has been made for a taxable year,

“(B) on such return there is an understatement of tax attributable to erroneous items of 1 individual filing the joint return,

“(C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement,

“(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement, and

“(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

“(2) APPOINTMENT OF RELIEF.—If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

“(3) UNDERSTATEMENT.—For purposes of this subsection, the term ‘understatement’ has the meaning given to such term by section 6662(d)(2)(A).

“(c) PROCEDURES TO LIMIT LIABILITY FOR TAXPAYERS NO LONGER MARRIED OR TAXPAYERS LEGALLY SEPARATED OR NOT LIVING TOGETHER.—

“(1) IN GENERAL.—Except as provided in this subsection, if an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d).

“(2) BURDEN OF PROOF.—Except as provided in subparagraph (A)(ii) or (C) of paragraph (3), each individual who elects the application of this subsection shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

“(3) ELECTION.—

“(A) INDIVIDUALS ELIGIBLE TO MAKE ELECTION.—

“(i) IN GENERAL.—An individual shall only be eligible to elect the application of this subsection if—

“(I) at the time such election is filed, such individual is no longer married to, or is legally

separated from, the individual with whom such individual filed the joint return to which the election relates, or

“(II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

“(ii) CERTAIN TAXPAYERS INELIGIBLE TO ELECT.—If the Secretary demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid (and section 6013(d)(3) shall apply to the joint return).

“(B) TIME FOR ELECTION.—An election under this subsection for any taxable year shall be made not later than 2 years after the date on which the Secretary has begun collection activities with respect to the individual making the election.

“(C) ELECTION NOT VALID WITH RESPECT TO CERTAIN DEFICIENCIES.—If the Secretary demonstrates that an individual making an election under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under subsection (d), such election shall not apply to such deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.

“(4) LIABILITY INCREASED BY REASON OF TRANSFERS OF PROPERTY TO AVOID TAX.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the portion of the deficiency for which the individual electing the application of this subsection is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

“(B) DISQUALIFIED ASSET.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘disqualified asset’ means any property or right to property transferred to an individual making the election under this subsection with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

“(ii) PRESUMPTION.—

“(I) IN GENERAL.—For purposes of clause (i), except as provided in subclause (II), any transfer which is made after the date which is 1 year before the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

“(II) EXCEPTIONS.—Subclause (I) shall not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

“(d) ALLOCATION OF DEFICIENCY.—For purposes of subsection (c)—

“(1) IN GENERAL.—The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

“(2) SEPARATE TREATMENT OF CERTAIN ITEMS.—If a deficiency (or portion thereof) is attributable to—

“(A) the disallowance of a credit, or

“(B) any tax (other than tax imposed by section 1 or 55) required to be included with the joint return,

and such item is allocated to 1 individual under paragraph (3), such deficiency (or portion) shall

be allocated to such individual. Any such item shall not be taken into account under paragraph (1).

“(3) ALLOCATION OF ITEMS GIVING RISE TO THE DEFICIENCY.—For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

“(B) EXCEPTION WHERE OTHER SPOUSE BENEFITS.—Under rules prescribed by the Secretary, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

“(C) EXCEPTION FOR FRAUD.—The Secretary may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Secretary establishes that such allocation is appropriate due to fraud of 1 or both individuals.

“(4) LIMITATIONS ON SEPARATE RETURNS DISREGARDED.—If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately. A similar rule shall apply for purposes of section 86.

“(5) CHILD'S LIABILITY.—If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either spouse and such liability shall be allocated appropriately between the spouses.

“(e) PETITION FOR REVIEW BY TAX COURT.—

“(1) IN GENERAL.—In the case of an individual who elects to have subsection (b) or (c) apply—

“(A) IN GENERAL.—The individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed during the 90-day period beginning on the date on which the Secretary mails by certified or registered mail a notice to such individual of the Secretary's determination of relief available to the individual. Notwithstanding the preceding sentence, an individual may file such petition at any time after the date which is 6 months after the date such election is filed with the Secretary and before the close of such 90-day period.

“(B) RESTRICTIONS APPLICABLE TO COLLECTION OF ASSESSMENT.—

“(i) IN GENERAL.—Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subsection (b) or (c) for collection of any assessment to which such election relates until the expiration of the 90-day period described in subparagraph (A), or, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

“(ii) AUTHORITY TO ENJOIN COLLECTION ACTIONS.—Notwithstanding the provisions of section 7421(a), the beginning of such levy or proceeding during the time the prohibition under clause (i) is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this subparagraph to enjoin any action or proceeding unless a timely petition has been filed under subparagraph (A) and then only in respect of the amount of the assessment to which the election under subsection (b) or (c) relates.

“(2) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended for the

period during which the Secretary is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and for 60 days thereafter.

“(3) APPLICABLE RULES.—

“(A) ALLOWANCE OF CREDIT OR REFUND.—Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than section 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

“(B) RES JUDICATA.—In the case of any election under subsection (b) or (c), if a decision of the Tax Court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the individual for relief which was not an issue in such proceeding. The exception contained in the preceding sentence shall not apply if the Tax Court determines that the individual participated meaningfully in such prior proceeding.

“(C) LIMITATION ON TAX COURT JURISDICTION.—If a suit for refund is begun by either individual filing the joint return pursuant to section 6532—

“(i) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund, and

“(ii) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.

“(4) NOTICE TO OTHER SPOUSE.—The Tax Court shall establish rules which provide the individual filing a joint return but not making the election under subsection (b) or (c) with adequate notice and an opportunity to become a party to a proceeding under either such subsection.

“(f) EQUITABLE RELIEF.—Under procedures prescribed by the Secretary, if—

“(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and

“(2) relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section, including—

“(1) regulations providing methods for allocation of items other than the methods under subsection (d)(3), and

“(2) regulations providing the opportunity for an individual to have notice of, and an opportunity to participate in, any administrative proceeding with respect to an election made under subsection (b) or (c) by the other individual filing the joint return.”

(b) EQUITABLE RELIEF FOR INDIVIDUALS NOT FILING JOINT RETURN.—Section 66(c) (relating to spouse relieved of liability in certain other cases) is amended by adding at the end the following new sentence: “Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.”

(c) SEPARATE FORM FOR APPLYING FOR SPOUSAL RELIEF.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall develop a separate form with instructions for use by taxpayers in applying for relief under section 6015(a) of the Internal Revenue Code of 1986, as added by this section.

(d) SEPARATE NOTICE TO EACH FILER.—The Secretary of the Treasury shall, wherever practicable, send any notice relating to a joint return under section 6013 of the Internal Revenue

Code of 1986 separately to each individual filing the joint return.

(e) CONFORMING AMENDMENTS.—

(1) Section 6013 is amended by striking subsection (e).

(2) Subparagraph (A) of section 6230(c)(5) is amended by striking “section 6013(e)” and inserting “section 6015”.

(3) Section 7421(a) is amended by inserting “6015(d),” after “sections”.

(f) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by inserting after the item relating to section 6014 the following new item:

“Sec. 6015. Relief from joint and several liability on joint return.”

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to any liability for tax arising after the date of the enactment of this Act and any liability for tax arising on or before such date but remaining unpaid as of such date.

(2) 2-YEAR PERIOD.—The 2-year period under subsection (b)(1)(E) or (c)(3)(B) of section 6015 of the Internal Revenue Code of 1986 shall not expire before the date which is 2 years after the date of the first collection activity after the date of the enactment of this Act.

SEC. 3202. SUSPENSION OF STATUTE OF LIMITATIONS ON FILING REFUND CLAIMS DURING PERIODS OF DISABILITY.

(a) IN GENERAL.—Section 6511 (relating to limitations on credit or refund) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) RUNNING OF PERIODS OF LIMITATION SUSPENDED WHILE TAXPAYER IS UNABLE TO MANAGE FINANCIAL AFFAIRS DUE TO DISABILITY.—

“(1) IN GENERAL.—In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

“(2) FINANCIALLY DISABLED.—

“(A) IN GENERAL.—For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.

“(B) EXCEPTION WHERE INDIVIDUAL HAS GUARDIAN, ETC.—An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to periods of disability before, on, or after the date of the enactment of this Act but shall not apply to any claim for credit or refund which (without regard to such amendment) is barred by the operation of any law or rule of law (including res judicata) as of the date of the enactment of this Act.

Subtitle D—Provisions Relating to Interest and Penalties

SEC. 3301. ELIMINATION OF INTEREST RATE DIFFERENTIAL ON OVERLAPPING PERIODS OF INTEREST ON TAX OVERPAYMENTS AND UNDERPAYMENTS.

(a) IN GENERAL.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end the following new subsection:

“(d) ELIMINATION OF INTEREST ON OVERLAPPING PERIODS OF TAX OVERPAYMENTS AND UNDERPAYMENTS.—To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same tax-

payer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.”

(b) CONFORMING AMENDMENT.—Subsection (f) of section 6601 (relating to satisfaction by credits) is amended by adding at the end the following new sentence: “The preceding sentence shall not apply to the extent that section 6621(d) applies.”

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided under paragraph (2), the amendments made by this section shall apply to interest for periods beginning after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by this section shall apply to interest for periods beginning before the date of the enactment of this Act if the taxpayer—

(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies, and

(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods.

SEC. 3302. INCREASE IN OVERPAYMENT RATE PAYABLE TO TAXPAYERS OTHER THAN CORPORATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 6621(a)(1) (defining overpayment rate) is amended to read as follows:

“(B) 3 percentage points (2 percentage points in the case of a corporation).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest for the second and succeeding calendar quarters beginning after the date of the enactment of this Act.

SEC. 3303. MITIGATION OF PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.

(a) IN GENERAL.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

“(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.—In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting ‘0.25’ for ‘0.5’ each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply for purposes of determining additions to the tax for months beginning after December 31, 1999.

SEC. 3304. MITIGATION OF FAILURE TO DEPOSIT PENALTY.

(a) TAXPAYER MAY DESIGNATE PERIODS TO WHICH DEPOSITS APPLY.—Section 6656 (relating to underpayment of deposits) is amended by adding at the end the following new subsection:

“(e) DESIGNATION OF PERIODS TO WHICH DEPOSITS APPLY.—

“(1) IN GENERAL.—A person may, with respect to any deposit of tax to be reported on such person's return for a specified tax period, designate the period or periods within such specified tax period to which the deposit is to be applied for purposes of this section.

“(2) TIME FOR MAKING DESIGNATION.—A person may make a designation under paragraph (1) only during the 90-day period beginning on the date of a notice that a penalty under subsection (a) has been imposed for the specified tax period to which the deposit relates.”

(b) EXPANSION OF EXEMPTION FOR FIRST-TIME DEPOSITS.—

(1) IN GENERAL.—Paragraph (2) of section 6656(c) (relating to exemption for first-time depositors of employment taxes) is amended to read as follows:

“(2) such failure—

“(A) occurs during the 1st quarter that such person was required to deposit any employment tax, or

“(B) if such person is required to change the frequency of deposits of any employment tax, relates to the first deposit to which such change applies, and”.

(c) PERIODS APPLY TO CURRENT LIABILITIES UNLESS DESIGNATED OTHERWISE.—Paragraph (1) of section 6656(e) (as added by subsection (a) of this section) is amended to read as follows:

“(e) DESIGNATION OF PERIODS TO WHICH DEPOSITS APPLY.—

“(1) IN GENERAL.—A deposit made under this section shall be applied to the most recent period or periods within the specified tax period to which the deposit relates, unless the person making such deposit designates a different period or periods to which such deposit is to be applied.”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits required to be made after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO CURRENT LIABILITIES.—The amendment made by subsection (c) shall apply to deposits required to be made after December 31, 2001.

SEC. 3305. SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT INDIVIDUAL TAXPAYER.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT TAXPAYER.—

“(1) SUSPENSION.—

“(A) IN GENERAL.—In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) beginning on the later of—

“(i) the date on which the return is filed, or

“(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

“(B) SEPARATE APPLICATION.—This paragraph shall be applied separately with respect to each item or adjustment.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A) any penalty imposed by section 6651,

“(B) any interest, penalty, addition to tax, or additional amount in a case involving fraud,

“(C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return, or

“(D) any criminal penalty.

“(3) SUSPENSION PERIOD.—For purposes of this subsection, the term ‘suspension period’ means the period—

“(A) beginning on the day after the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) under paragraph (1), and

“(B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 3306. PROCEDURAL REQUIREMENTS FOR IMPOSITION OF PENALTIES AND ADDITIONS TO TAX.

(a) IN GENERAL.—Chapter 68 (relating to additions to the tax, additional amounts, and assess-

able penalties) is amended by adding at the end the following new subchapter:

“Subchapter C—Procedural Requirements

“Sec. 6751. Procedural requirements.

“SEC. 6751. PROCEDURAL REQUIREMENTS.

“(a) COMPUTATION OF PENALTY INCLUDED IN NOTICE.—The Secretary shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty.

“(b) APPROVAL OF ASSESSMENT.—

“(1) IN GENERAL.—No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A) any addition to tax under section 6651, 6654, or 6655, or

“(B) any other penalty automatically calculated through electronic means.

“(c) PENALTIES.—For purposes of this section, the term ‘penalty’ includes any addition to tax or any additional amount.”.

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 68 is amended by adding at the end the following new item:

“SUBCHAPTER C. Procedural requirements.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices issued, and penalties assessed, after December 31, 2000.

SEC. 3307. PERSONAL DELIVERY OF NOTICE OF PENALTY UNDER SECTION 6672.

(a) IN GENERAL.—Paragraph (1) of section 6672(b) (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by inserting “or in person” after “section 6212(b)”.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6672(b) is amended by inserting “(or, in the case of such a notice delivered in person, such delivery)” after “paragraph (1)”.

(2) Paragraph (3) of section 6672(b) is amended by inserting “or delivered in person” after “mailed” each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3308. NOTICE OF INTEREST CHARGES.

(a) IN GENERAL.—Chapter 67 (relating to interest) is amended by adding at the end the following new subchapter:

“Subchapter D—Notice requirements

“Sec. 6631. Notice requirements.

“SEC. 6631. NOTICE REQUIREMENTS.

“The Secretary shall include with each notice to an individual taxpayer which includes an amount of interest required to be paid by such taxpayer under this title information with respect to the section of this title under which the interest is imposed and a computation of the interest.”.

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 67 is amended by adding at the end the following new item:

“SUBCHAPTER D. Notice requirements.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices issued after December 31, 2000.

SEC. 3309. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.

(a) IN GENERAL.—Section 6404 (relating to abatements), as amended by section 3305, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—

“(1) IN GENERAL.—If the Secretary extends for any period the time for filing income tax returns under section 6081 and the time for paying income tax with respect to such returns under section 6161 for any taxpayer located in a Presidentially declared disaster area, the Secretary shall abate for such period the assessment of any interest prescribed under section 6601 on such income tax.

“(2) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of paragraph (1), the term ‘Presidentially declared disaster area’ means, with respect to any taxpayer, any area which the President has determined warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

(c) EMERGENCY DESIGNATION.—

(1) For the purposes of section 252(e) of the Balanced Budget and Emergency Deficit Control Act, Congress designates the provisions of this section as an emergency requirement.

(2) The amendments made by subsections (a) and (b) of this section shall only take effect upon the transmittal by the President to the Congress of a message designating the provisions of subsections (a) and (b) as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act.

Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities

PART I—DUE PROCESS

SEC. 3401. DUE PROCESS IN IRS COLLECTION ACTIONS.

(a) NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting before the table of sections the following:

“Part I. Due process for liens.

“Part II. Liens.

“PART I—DUE PROCESS FOR LIENS

“Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

“SEC. 6320. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.

“(a) REQUIREMENT OF NOTICE.—

“(1) IN GENERAL.—The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

“(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

“(A) given in person,

“(B) left at the dwelling or usual place of business of such person, or

“(C) sent by certified or registered mail to such person's last known address, not more than 5 business days after the day of the filing of the notice of lien.

“(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

“(A) the amount of unpaid tax,

“(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2),

“(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals, and

“(D) the provisions of this title and procedures relating to the release of liens on property.

“(b) RIGHT TO FAIR HEARING.—

“(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

“(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to

which the unpaid tax specified in subsection (a)(3)(A) relates.

“(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

“(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

“(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply.

“PART II—LIENS”.

(b) NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.—Subchapter D of chapter 64 (relating to seizure of property for collection of taxes) is amended by inserting before the table of sections the following:

“Part I. Due process for collections.

“Part II. Levy.

“PART I—DUE PROCESS FOR COLLECTIONS

“Sec. 6330. Notice and opportunity for hearing before levy.

“SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

“(a) REQUIREMENT OF NOTICE BEFORE LEVY.—

“(1) IN GENERAL.—No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

“(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

“(A) given in person,

“(B) left at the dwelling or usual place of business of such person, or

“(C) sent by certified or registered mail, return receipt requested, to such person’s last known address, not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

“(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

“(A) the amount of unpaid tax,

“(B) the right of the person to request a hearing during the 30-day period under paragraph (2), and

“(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

“(i) the provisions of this title relating to levy and sale of property,

“(ii) the procedures applicable to the levy and sale of property under this title,

“(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

“(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159), and

“(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

“(b) RIGHT TO FAIR HEARING.—

“(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

“(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

“(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

“(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

“(1) REQUIREMENT OF INVESTIGATION.—The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

“(2) ISSUES AT HEARING.—

“(A) IN GENERAL.—The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

“(i) appropriate spousal defenses,

“(ii) challenges to the appropriateness of collection actions, and

“(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

“(B) UNDERLYING LIABILITY.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

“(3) BASIS FOR THE DETERMINATION.—The determination by an appeals officer under this subsection shall take into consideration—

“(A) the verification presented under paragraph (1),

“(B) the issues raised under paragraph (2), and

“(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

“(4) CERTAIN ISSUES PRECLUDED.—An issue may not be raised at the hearing if—

“(A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding, and

“(B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding.

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

“(d) PROCEEDING AFTER HEARING.—

“(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination—

“(A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter), or

“(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States. If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

“(2) JURISDICTION RETAINED AT IRS OFFICE OF APPEALS.—The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

“(A) collection actions taken or proposed with respect to such determination, and

“(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

“(e) SUSPENSION OF COLLECTIONS AND STATUTE OF LIMITATIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if a hearing is requested under sub-

section (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing.

“(2) LEVY UPON APPEAL.—Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

“(f) JEOPARDY AND STATE REFUND COLLECTION.—If—

“(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy, or

“(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund, this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

“PART II—LEVY”.

(c) REVIEW BY SPECIAL TRIAL JUDGES ALLOWED.—

(1) IN GENERAL.—Section 7443(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking “and” at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

“(4) any proceeding under section 6320 or 6330, and”.

(2) AUTHORITY TO MAKE DECISIONS.—Section 7443(c) (relating to authority to make court decisions) is amended by striking “or (3)” and inserting “(3), or (4)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act.

PART II—EXAMINATION ACTIVITIES

SEC. 3411. CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

“SEC. 7525. CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

“(a) UNIFORM APPLICATION TO TAXPAYER COMMUNICATIONS WITH FEDERALLY AUTHORIZED PRACTITIONERS.—

“(1) GENERAL RULE.—With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

“(2) LIMITATIONS.—Paragraph (1) may only be asserted in—

“(A) any noncriminal tax matter before the Internal Revenue Service, and

“(B) any noncriminal tax proceeding in Federal court brought by or against the United States.

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

“(A) FEDERALLY AUTHORIZED TAX PRACTITIONER.—The term ‘federally authorized tax practitioner’ means any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under section 330 of title 31, United States Code.

“(B) TAX ADVICE.—The term ‘tax advice’ means advice given by an individual with respect to a matter which is within the scope of the individual’s authority to practice described in subparagraph (A).”

“(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING CORPORATE TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).”

(b) CONFORMING AMENDMENT.—The table of sections for such chapter 77 is amended by adding at the end the following new item:

“Sec. 7525. Confidentiality privileges relating to taxpayer communications.”

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

SEC. 3412. LIMITATION ON FINANCIAL STATUS AUDIT TECHNIQUES.

Section 7602 (relating to examination of books and witnesses) is amended by adding at the end the following new subsection:

“(d) LIMITATION ON EXAMINATION ON UNREPORTED INCOME.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.”

SEC. 3413. SOFTWARE TRADE SECRETS PROTECTION.

(a) IN GENERAL.—Subchapter A of chapter 78 (relating to examination and inspection) is amended by redesignating section 7612 as section 7613 and by inserting after 7611 the following new section:

“SEC. 7612. SPECIAL PROCEDURES FOR SUMMONSES FOR COMPUTER SOFTWARE.

“(a) GENERAL RULE.—For purposes of this title—

“(1) except as provided in subsection (b), no summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons to produce or analyze any tax-related computer software source code, and

“(2) any software and related materials which are provided to the Secretary under this title shall be subject to the safeguards under subsection (c).

“(b) CIRCUMSTANCES UNDER WHICH COMPUTER SOFTWARE SOURCE CODE MAY BE PROVIDED.—

“(1) IN GENERAL.—Subsection (a)(1) shall not apply to any portion, item, or component of tax-related computer software source code if—

“(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

“(i) the taxpayer’s books, papers, records, or other data, or

“(ii) the computer software executable code (and any modifications thereof) to which such source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item,

“(B) the Secretary identifies with reasonable specificity the portion, item, or component of such source code needed to verify the correctness of such item on the return, and

“(C) the Secretary determines that the need for the portion, item, or component of such source code with respect to such item outweighs the risks of unauthorized disclosure of trade secrets.

“(2) EXCEPTIONS.—Subsection (a)(1) shall not apply to—

“(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws,

“(B) any tax-related computer software source code acquired or developed by the taxpayer or a

related person primarily for internal use by the taxpayer or such person rather than for commercial distribution,

“(C) any communications between the owner of the tax-related computer software source code and the taxpayer or related persons, or

“(D) any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this title.

“(3) COOPERATION REQUIRED.—For purposes of paragraph (1), the Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) of such paragraph if—

“(A) the Secretary determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in paragraph (1)(A)(ii),

“(B) the Secretary makes a formal request to the taxpayer for such code and data and to the owner of the computer software source code for such executable code, and

“(C) such code and data is not provided within 180 days of such request.

“(4) RIGHT TO CONTEST SUMMONS.—In any proceeding brought under section 7604 to enforce a summons issued under the authority of this subsection, the court shall, at the request of any party, hold a hearing to determine whether the applicable requirements of this subsection have been met.

“(c) SAFEGUARDS TO ENSURE PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.—

“(1) ENTRY OF PROTECTIVE ORDER.—In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.

“(2) PROTECTION OF SOFTWARE.—Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer—

“(A) the software may be used only in connection with the examination of such taxpayer’s return, any appeal by the taxpayer to the Internal Revenue Service Office of Appeals, any judicial proceeding (and any appeals therefrom), and any inquiry into any offense connected with the administration or enforcement of the internal revenue laws,

“(B) the Secretary shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software,

“(C) the software shall be maintained in a secure area or place, and, in the case of computer software source code, shall not be removed from the owner’s place of business unless the owner permits, or a court orders, such removal,

“(D) the software may not be copied except as necessary to perform such analysis, and the Secretary shall number all copies made and certify in writing that no other copies have been (or will be) made,

“(E) at the end of the period during which the software may be used under subparagraph (A)—

“(i) the software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D) on the hard drive of a machine or other mass storage device shall be permanently deleted, and

“(ii) the Secretary shall obtain from any person who analyzes or otherwise had access to such software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them,

“(F) the software may not be decompiled or disassembled,

“(G) the Secretary shall provide to the taxpayer and the owner of any interest in such software, as the case may be, a written agreement, between the Secretary and any person who is not an officer or employee of the United States and who will analyze or otherwise have access to such software, which provides that such person agrees not to—

“(i) disclose such software to any person other than persons to whom such information could be disclosed for tax administration purposes under section 6103, or

“(ii) participate for 2 years in the development of software which is intended for a similar purpose as the software examined, and

“(H) the software shall be treated as return information for purposes of section 6103.

For purposes of subparagraph (C), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner’s premises. The owner of any interest in the software shall be considered a party to any agreement described in subparagraph (G).

“(d) DEFINITIONS.—For purposes of this section—

“(1) SOFTWARE.—The term ‘software’ includes computer software source code and computer software executable code.

“(2) COMPUTER SOFTWARE SOURCE CODE.—The term ‘computer software source code’ means—

“(A) the code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer,

“(B) related programmers’ notes, design documents, memoranda, and similar documentation, and

“(C) related customer communications.

“(3) COMPUTER SOFTWARE EXECUTABLE CODE.—The term ‘computer software executable code’ means—

“(A) any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions, and

“(B) any related user manuals.

“(4) OWNER.—The term ‘owner’ shall, with respect to any software, include the developer of the software.

“(5) RELATED PERSON.—A person shall be treated as related to another person if such persons are related persons under section 267 or 707(b).

“(6) TAX-RELATED COMPUTER SOFTWARE SOURCE CODE.—The term ‘tax-related computer software source code’ means the computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.”

(b) UNAUTHORIZED DISCLOSURE OF SOFTWARE.—Section 7213 (relating to unauthorized disclosure of information) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) DISCLOSURE OF SOFTWARE.—Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.”

(c) APPLICATION OF SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—Paragraph (2) of section 7603(b), as amended by section 3416(a), is amended by striking “and” at the end of subparagraph (H), by striking a period at the end of subparagraph (I) and inserting “, and”, and by adding at the end the following new subparagraph:

“(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)).”

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which such source code relates."

(d) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 78 is amended by striking the item relating to section 7612 and by inserting the following new item:

"Sec. 7612. Special procedures for summonses for computer software.

"Sec. 7613. Cross references."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to summonses issued, and software acquired, after the date of the enactment of this Act.

(2) SOFTWARE PROTECTION.—In the case of any software acquired on or before such date of enactment, the requirements of section 7612(a)(2) of the Internal Revenue Code of 1986 (as added by such amendments) shall apply after the 90th day after such date. The preceding sentence shall not apply to the requirement under section 7612(c)(2)(C)(ii) of such Code (as so added).

SEC. 3414. THREAT OF AUDIT PROHIBITED TO COERCIVE TIP REPORTING ALTERNATIVE COMMITMENT AGREEMENTS.

The Secretary of the Treasury or the Secretary's delegate shall instruct employees of the Internal Revenue Service that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into entering into a Tip Reporting Alternative Commitment Agreement.

SEC. 3415. TAXPAYERS ALLOWED MOTION TO QUASH ALL THIRD-PARTY SUMMONSES.

(a) IN GENERAL.—Paragraph (1) of section 7609(a) (relating to summonses to which section applies) is amended by striking so much of such paragraph as precedes "notice of the summons" and inserting the following:

"(1) IN GENERAL.—If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then"

(b) COORDINATION WITH OTHER AUTHORITY.—Section 7609 (relating to special procedures for third-party summonses) is amended by adding at the end the following new subsection:

"(j) USE OF SUMMONS NOT REQUIRED.—Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7609 is amended by striking paragraphs (3) and (4), by redesignating paragraph (5) as paragraph (3), and by striking in paragraph (3) (as so redesignated) "subsection (c)(2)(B)" and inserting "subsection (c)(2)(D)".

(2) Subsection (c) of section 7609 is amended to read as follows:

"(c) SUMMONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

"(2) EXCEPTIONS.—This section shall not apply to any summons—

"(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person,

"(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept,

"(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A),

"(D) issued in aid of the collection of—

"(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued, or

"(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i),

"(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws, and

"(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)), or

"(F) described in subsection (f) or (g).

"(3) RECORDS.—For purposes of this section, the term 'records' includes books, papers, and other data."

(3) Paragraph (2) of section 7609(e) is amended by striking "third-party recordkeeper's" and all that follows through "subsection (f)" and inserting "summoned party's response to the summons".

(4) Subsection (f) of section 7609 is amended—

(A) by striking "described in subsection (c)" and inserting "described in subsection (c)(1)", and

(B) by inserting "or testimony" after "records" in paragraph (3).

(5) Subsection (g) of section 7609 is amended by striking "In the case of any summons described in subsection (c), the provisions of subsections (a)(1) and (b) shall not apply if" and inserting "A summons is described in this subsection if".

(6)(A) Subsection (i) of section 7609 is amended by striking "THIRD-PARTY RECORDKEEPER AND" in the subsection heading.

(B) Paragraph (1) of section 7609(i) is amended by striking "described in subsection (c), the third-party recordkeeper" and inserting "to which this section applies for the production of records, the summoned party".

(C) Paragraph (2) of section 7609(i) is amended—

(i) by striking "RECORDKEEPER" in the heading and inserting "SUMMONED PARTY", and

(ii) by striking "the third-party recordkeeper" and inserting "the summoned party".

(D) Paragraph (3) of section 7609(i) is amended to read as follows:

"(3) PROTECTION FOR SUMMONED PARTY WHO DISCLOSES.—Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses served after the date of the enactment of this Act.

SEC. 3416. SERVICE OF SUMMONSES TO THIRD-PARTY RECORDKEEPERS PERMITTED BY MAIL.

(a) IN GENERAL.—Section 7603 (relating to service of summons) is amended by striking "A summons issued" and inserting "(a) IN GENERAL.—A summons issued" and by adding at the end the following new subsection:

"(b) SERVICE BY MAIL TO THIRD-PARTY RECORDKEEPERS.—

"(1) IN GENERAL.—A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

"(2) THIRD-PARTY RECORDKEEPER.—For purposes of paragraph (1), the term 'third-party recordkeeper' means—

"(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as

defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A));

"(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)));

"(C) any person extending credit through the use of credit cards or similar devices;

"(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)));

"(E) any attorney;

"(F) any accountant;

"(G) any barter exchange (as defined in section 6045(c)(3));

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof, and

"(I) any enrolled agent."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to summonses served after the date of the enactment of this Act.

SEC. 3417. NOTICE OF IRS CONTACT OF THIRD PARTIES.

(a) IN GENERAL.—Section 7602 (relating to examination of books and witnesses), as amended by section 3412, is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) NOTICE OF CONTACT OF THIRD PARTIES.—

"(1) GENERAL NOTICE.—An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

"(2) NOTICE OF SPECIFIC CONTACTS.—The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

"(3) EXCEPTIONS.—This subsection shall not apply—

"(A) to any contact which the taxpayer has authorized,

"(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person, or

"(C) with respect to any pending criminal investigation."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contacts made after the 180th day after the date of the enactment of this Act.

PART III—COLLECTION ACTIVITIES

Subpart A—Approval Process

SEC. 3421. APPROVAL PROCESS FOR LIENS, LEVIES, AND SEIZURES.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement procedures under which—

(1) a determination by an employee to file a notice of lien or levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to be reviewed by a supervisor of the employee before the action was taken, and

(2) appropriate disciplinary action would be taken against the employee or supervisor where the procedures under paragraph (1) were not followed.

(b) REVIEW PROCESS.—The review process under subsection (a)(1) may include a certification that the employee has—

(1) reviewed the taxpayer's information,

(2) verified that a balance is due, and

(3) affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or right to property.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the date of the enactment of this Act.

(2) AUTOMATED COLLECTION SYSTEM ACTIONS.—In the case of any action under an automated collection system, this section shall apply to actions initiated after December 31, 2000.

Subpart B—Liens and Levies

SEC. 3431. MODIFICATIONS TO CERTAIN LEVY EXEMPTION AMOUNTS.

(a) FUEL, ETC.—Section 6334(a)(2) (relating to fuel, provisions, furniture, and personal effects) is amended by striking "\$2,500" and inserting "\$6,250".

(b) BOOKS, ETC.—Section 6334(a)(3) (relating to books and tools of a trade, business, or profession) is amended by striking "\$1,250" and inserting "\$3,125".

(c) CONFORMING AMENDMENT.—Section 6334(g)(1) (relating to inflation adjustment) is amended—

(1) by striking "1997" and inserting "1999", and

(2) by striking "1996" in subparagraph (B) and inserting "1998".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to levies issued after the date of the enactment of this Act.

SEC. 3432. RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS UNCOLLECTIBLE.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(e) RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS NOT COLLECTIBLE.—In the case of a levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to levies imposed after December 31, 1999.

SEC. 3433. LEVY PROHIBITED DURING PENDENCY OF REFUND PROCEEDINGS.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) NO LEVY DURING PENDENCY OF PROCEEDINGS FOR REFUND OF DIVISIBLE TAX.—

"(1) IN GENERAL.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if—

"(A) the decision in such proceeding would be res judicata with respect to such unpaid tax, or

"(B) such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

"(2) DIVISIBLE TAX.—For purposes of paragraph (1), the term 'divisible tax' means—

"(A) any tax imposed by subtitle C, and

"(B) the penalty imposed by section 6672 with respect to any such tax.

"(3) EXCEPTIONS.—

"(A) CERTAIN UNPAID TAXES.—This subsection shall not apply with respect to any unpaid tax if—

"(i) the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax, or

"(ii) the Secretary finds that the collection of such tax is in jeopardy.

"(B) CERTAIN LEVIES.—This subsection shall not apply to—

"(i) any levy to carry out an offset under section 6402, and

"(ii) any levy which was first made before the date that the applicable proceeding under this subsection commenced.

"(4) LIMITATION ON COLLECTION ACTIVITY; AUTHORITY TO ENJOIN COLLECTION.—

"(A) LIMITATION ON COLLECTION.—No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to—

"(i) any counterclaim in a proceeding under such paragraph, or

"(ii) any proceeding relating to a proceeding under such paragraph.

"(B) AUTHORITY TO ENJOIN.—Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

"(5) SUSPENSION OF STATUTE OF LIMITATIONS ON COLLECTION.—The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

"(6) PENDENCY OF PROCEEDING.—For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to unpaid tax attributable to taxable periods beginning after December 31, 1998.

SEC. 3434. APPROVAL REQUIRED FOR JEOPARDY AND TERMINATION ASSESSMENTS AND JEOPARDY LEVIES.

(a) IN GENERAL.—Paragraph (1) of section 7429(a) (relating to review of jeopardy levy or assessment procedures) is amended to read as follows:

"(1) ADMINISTRATIVE REVIEW.—

"(A) PRIOR APPROVAL REQUIRED.—No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

"(B) INFORMATION TO TAXPAYER.—Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxes assessed and levies made after the date of the enactment of this Act.

SEC. 3435. INCREASE IN AMOUNT OF CERTAIN PROPERTY ON WHICH LIEN NOT VALID.

(a) CERTAIN PROPERTY.—

(1) IN GENERAL.—Subsection (b) of section 6323 (relating to validity and priority against certain persons) is amended—

(A) by striking "\$250" in paragraph (4) (relating to personal property purchased in casual sale) and inserting "\$1,000", and

(B) by striking "\$1,000" in paragraph (7) (relating to residential property subject to a mechanic's lien for certain repairs and improvements) and inserting "\$5,000".

(2) INFLATION ADJUSTMENT.—Subsection (i) of section 6323 (relating to special rules) is amended by adding at the end the following new paragraph:

"(4) COST-OF-LIVING ADJUSTMENT.—In the case of notices of liens imposed by section 6321 which are filed in any calendar year after 1998, each of the dollar amounts under paragraph (4) or (7) of subsection (b) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10."

(b) EXPANSION OF TREATMENT OF PASSBOOK LOANS.—Paragraph (10) of section 6323(b) is amended—

(1) by striking "PASSBOOK LOANS" in the heading and inserting "DEPOSIT-SECURED LOANS";

(2) by striking ", evidenced by a passbook," and

(3) by striking all that follows "secured by such account" and inserting a period.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3436. WAIVER OF EARLY WITHDRAWAL TAX FOR IRS LEVIES ON EMPLOYER-SPONSORED RETIREMENT PLANS OR IRAS.

(a) IN GENERAL.—Section 72(t)(2)(A) (relating to subsection not to apply to certain distributions) is amended by striking "or" at the end of clauses (iv) and (v), by striking the period at the end of clause (vi) and inserting ", or", and by adding at the end the following new clause:

"(vii) made on account of a levy under section 6331 on the qualified retirement plan."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1999.

Subpart C—Seizures

SEC. 3441. PROHIBITION OF SALES OF SEIZED PROPERTY AT LESS THAN MINIMUM BID.

(a) IN GENERAL.—Section 6335(e)(1)(A)(i) (relating to determinations relating to minimum price) is amended by striking "a minimum price for which such property shall be sold" and inserting "a minimum price below which such property shall not be sold".

(b) REFERENCE TO PENALTY FOR VIOLATION.—Section 6335(e) is amended by adding at the end the following new paragraph:

"(4) CROSS REFERENCE.—

"For provision providing for civil damages for violation of paragraph (1)(A)(i), see section 7433."

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

SEC. 3442. ACCOUNTING OF SALES OF SEIZED PROPERTY.

(a) IN GENERAL.—Section 6340 (relating to records of sale) is amended—

(1) in subsection (a)—

(A) by striking "real", and

(B) by inserting "or certificate of sale of personal property" after "deed", and

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

"(c) ACCOUNTING TO TAXPAYER.—The taxpayer with respect to whose liability the sale was conducted or who redeemed the property shall be furnished—

"(1) the record under subsection (a) (other than the names of the purchasers),

"(2) the amount from such sale applied to the taxpayer's liability, and

"(3) the remaining balance of such liability."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to seizures occurring after the date of the enactment of this Act.

SEC. 3443. UNIFORM ASSET DISPOSAL MECHANISM.

Not later than the date which is 2 years after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall implement a uniform asset disposal mechanism for sales under section 6335 of the Internal Revenue Code of 1986. The mechanism

should be designed to remove any participation in such sales by revenue officers of the Internal Revenue Service and should consider the use of outsourcing.

SEC. 3444. CODIFICATION OF IRS ADMINISTRATIVE PROCEDURES FOR SEIZURE OF TAXPAYER'S PROPERTY.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint), as amended by section 3433, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) NO LEVY BEFORE INVESTIGATION OF STATUS OF PROPERTY.—

“(1) IN GENERAL.—For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

“(2) ELEMENTS IN INVESTIGATION.—For purposes of paragraph (1), an investigation of the status of any property shall include—

“(A) a verification of the taxpayer's liability,

“(B) the completion of an analysis under subsection (f),

“(C) the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability, and

“(D) a thorough consideration of alternative collection methods.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3445. PROCEDURES FOR SEIZURE OF RESIDENCES AND BUSINESSES.

(a) IN GENERAL.—Section 6334(a)(13) (relating to property exempt from levy) is amended to read as follows:

“(13) RESIDENCES EXEMPT IN SMALL DEFICIENCY CASES AND PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—

“(A) RESIDENCES IN SMALL DEFICIENCY CASES.—If the amount of the levy does not exceed \$5,000—

“(i) any real property used as a residence by the taxpayer, or

“(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

“(B) PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS.—Except to the extent provided in subsection (e)—

“(i) the principal residence of the taxpayer (within the meaning of section 121), and

“(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.”.

(b) LEVY ALLOWED IN CERTAIN CIRCUMSTANCES.—Section 6334(e) is amended to read as follows:

“(e) LEVY ALLOWED ON PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS IN CERTAIN CIRCUMSTANCES.—

“(1) PRINCIPAL RESIDENCES.—

“(A) APPROVAL REQUIRED.—A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

“(B) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

“(2) CERTAIN BUSINESS ASSETS.—Property (other than a principal residence) described in subsection (a)(13)(B) shall not be exempt from levy if—

“(A) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

“(B) the Secretary finds that the collection of tax is in jeopardy.

An official may not approve a levy under subparagraph (A) unless the official determines

that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.”.

(c) STATE FISH AND WILDLIFE PERMITS.—

(1) IN GENERAL.—With respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term “other assets” as used in section 6334(e)(2) of the Internal Revenue Code of 1986 shall include future income which may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(2) CONSTRUCTION.—Paragraph (1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in permits described in paragraph (1) is not property or a right to property under the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

PART IV—PROVISIONS RELATING TO EXAMINATION AND COLLECTION ACTIVITIES

SEC. 3461. PROCEDURES RELATING TO EXTENSIONS OF STATUTE OF LIMITATIONS BY AGREEMENT.

(a) AUTHORITY TO EXTEND 10-YEAR COLLECTION PERIOD AFTER ASSESSMENT.—Section 6502(a) (relating to length of period after collection) is amended—

(1) by striking paragraph (2) and inserting:

“(2) if—

“(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into, or

“(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.”; and

(2) by striking the first sentence in the matter following paragraph (2).

(b) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—Paragraph (4) of section 6501(c) (relating to the period for limitations on assessment and collection) is amended—

(1) by striking “Where” and inserting the following:

“(A) IN GENERAL.—Where”, and

(2) by adding at the end the following new subparagraph:

“(B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to requests to extend the period of limitations made after December 31, 1999.

(2) PRIOR REQUEST.—If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of—

(A) the last day of such 10-year period,

(B) December 31, 2002, or

(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.

SEC. 3462. OFFERS-IN-COMPROMISE.

(a) STANDARDS FOR EVALUATION OF OFFERS-IN-COMPROMISE.—Section 7122 (relating to offers-in-compromise) is amended by adding at the end the following new subsection:

“(c) STANDARDS FOR EVALUATION OF OFFERS.—

“(1) IN GENERAL.—The Secretary shall prescribe guidelines for officers and employees of the Internal Revenue Service to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute.

“(2) ALLOWANCES FOR BASIC LIVING EXPENSES.—

“(A) IN GENERAL.—In prescribing guidelines under paragraph (1), the Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.

“(B) USE OF SCHEDULES.—The guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses.

“(3) SPECIAL RULES RELATING TO TREATMENT OF OFFERS.—The guidelines under paragraph (1) shall provide that—

“(A) an officer or employee of the Internal Revenue Service shall not reject an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer, and

“(B) in the case of an offer-in-compromise which relates only to issues of liability of the taxpayer—

“(i) such offer shall not be rejected solely because the Secretary is unable to locate the taxpayer's return or return information for verification of such liability, and

“(ii) the taxpayer shall not be required to provide a financial statement.”.

(b) LEVY PROHIBITED WHILE OFFER-IN-COMPROMISE PENDING OR INSTALLMENT AGREEMENT PENDING OR IN EFFECT.—Section 6331 (relating to levy and distraint), as amended by sections 3433 and 3444, is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) NO LEVY WHILE CERTAIN OFFERS PENDING OR INSTALLMENT AGREEMENT PENDING OR IN EFFECT.—

“(1) OFFER-IN-COMPROMISE PENDING.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

“(A) during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary, and

“(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

“(2) INSTALLMENT AGREEMENTS.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

“(A) during the period that an offer by such person for an installment agreement under section 6159 for payment of such unpaid tax is pending with the Secretary,

“(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending),

“(C) during the period that such an installment agreement for payment of such unpaid tax is in effect, and

“(D) if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

“(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (3), (4), and (5) of

subsection (i) shall apply for purposes of this subsection."

(c) REVIEW OF REJECTIONS OF OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—

(1) IN GENERAL.—Section 7122 (relating to compromises), as amended by subsection (a), is amended by adding at the end the following new subsection:

"(d) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures—

"(1) for an independent administrative review of any rejection of a proposed offer-in-compromise or installment agreement made by a taxpayer under this section or section 6159 before such rejection is communicated to the taxpayer, and

"(2) which allow a taxpayer to appeal any rejection of such offer or agreement to the Internal Revenue Service Office of Appeals."

(2) CONFORMING AMENDMENT.—Section 6159 (relating to installment agreements) is amended by adding at the end the following new subsection:

"(d) CROSS REFERENCE.—

"For rights to administrative review and appeal, see section 7122(d)."

(d) PREPARATION OF STATEMENT RELATING TO OFFERS-IN-COMPROMISE.—The Secretary of the Treasury shall prepare a statement which sets forth in simple, nontechnical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers-in-compromise. Such statement shall—

(1) advise taxpayers who have entered into a compromise of the advantages of promptly notifying the Internal Revenue Service of any change of address or marital status,

(2) provide notice to taxpayers that in the case of a compromise terminated due to the actions of 1 spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such compromise with the spouse or former spouse who remains in compliance with such compromise, and

(3) provide notice to the taxpayer that the taxpayer may appeal the rejection of an offer-in-compromise to the Internal Revenue Service Office of Appeals.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to proposed offers-in-compromise and installment agreements submitted after the date of the enactment of this Act.

(2) SUSPENSION OF COLLECTION BY LEVY.—The amendment made by subsection (b) shall apply to offers-in-compromise pending on or made after December 31, 1999.

SEC. 3463. NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court.

(b) LATER FILING DEADLINES SPECIFIED ON NOTICE OF DEFICIENCY TO BE BINDING.—Subsection (a) of section 6213 (relating to restrictions applicable to deficiencies; petition to Tax Court) is amended by adding at the end the following new sentence: "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed."

(c) EFFECTIVE DATE.—Subsection (a) and the amendment made by subsection (b) shall apply to notices mailed after December 31, 1998.

SEC. 3464. REFUND OR CREDIT OF OVERPAYMENTS BEFORE FINAL DETERMINATION.

(a) TAX COURT PROCEEDINGS.—Subsection (a) of section 6213 is amended—

(1) by striking ", including the Tax Court." and inserting ", including the Tax Court, and a

refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection.", and

(2) by striking "to enjoin any action or proceeding" and inserting "to enjoin any action or proceeding or order any refund".

(b) OTHER PROCEEDINGS.—Subsection (a) of section 6512 is amended by striking the period at the end of paragraph (4) and inserting "; and", and by inserting after paragraph (4) the following new paragraphs:

"(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a), and

"(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b)."

(c) REFUND OR CREDIT PENDING APPEAL.—Paragraph (1) of section 6512(b) is amended by adding at the end the following new sentence: "If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3465. IRS PROCEDURES RELATING TO APPEALS OF EXAMINATIONS AND COLLECTIONS.

(a) DISPUTE RESOLUTION PROCEDURES.—

(1) IN GENERAL.—Chapter 74 (relating to closing agreements and compromises) is amended by redesignating section 7123 as section 7124 and by inserting after section 7122 the following new section:

"SEC. 7123. APPEALS DISPUTE RESOLUTION PROCEDURES.

"(a) EARLY REFERRAL TO APPEALS PROCEDURES.—The Secretary shall prescribe procedures by which any taxpayer may request early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals.

"(b) ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.—

"(1) MEDIATION.—The Secretary shall prescribe procedures under which a taxpayer or the Internal Revenue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

"(A) appeals procedures, or

"(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122."

"(2) ARBITRATION.—The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

"(A) appeals procedures, or

"(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122."

(2) CONFORMING AMENDMENT.—The table of sections for chapter 74 is amended by striking the item relating to section 7123 and inserting the following new items:

"Sec. 7123. Appeals dispute resolution procedures.

"Sec. 7124. Cross references."

(b) APPEALS OFFICERS IN EACH STATE.—The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.

(c) APPEALS VIDEOCONFERENCING ALTERNATIVE FOR RURAL AREAS.—The Commissioner of Internal Revenue shall consider the use of the videoconferencing of appeals conferences between appeals officers and taxpayers seeking appeals in rural or remote areas.

SEC. 3466. APPLICATION OF CERTAIN FAIR DEBT COLLECTION PROCEDURES.

(a) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by inserting after section 6303 the following new section:

"SEC. 6304. FAIR TAX COLLECTION PRACTICES.

"(a) COMMUNICATION WITH THE TAXPAYER.—Without the prior consent of the taxpayer given directly to the Secretary or the express permission of a court of competent jurisdiction, the Secretary may not communicate with a taxpayer in connection with the collection of any unpaid tax—

"(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the taxpayer;

"(2) if the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer; or

"(3) at the taxpayer's place of employment if the Secretary knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving such communication.

In the absence of knowledge of circumstances to the contrary, the Secretary shall assume that the convenient time for communicating with a taxpayer is after 8 a.m. and before 9 p.m., local time at the taxpayer's location.

"(b) PROHIBITION OF HARASSMENT AND ABUSE.—The Secretary may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any unpaid tax. Without limiting the general application of the foregoing, the following conduct is a violation of this subsection:

"(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

"(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

"(3) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

"(4) Except as provided under rules similar to the rules in section 804 of the Fair Debt Collection Practices Act (15 U.S.C. 1692b), the placement of telephone calls without meaningful disclosure of the caller's identity.

"(c) CIVIL ACTION FOR VIOLATIONS OF SECTION.—

"For civil action for violations of this section, see section 7433."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 64 is amended by inserting after the item relating to section 6303 the following new item:

"Sec. 6304. Fair tax collection practices."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3467. GUARANTEED AVAILABILITY OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) SECRETARY REQUIRED TO ENTER INTO INSTALLMENT AGREEMENTS IN CERTAIN CASES.—In the case of a liability for tax of an individual under subtitle A, the Secretary shall enter into an agreement to accept the payment of such tax in installments if, as of the date the individual offers to enter into the agreement—

“(1) the aggregate amount of such liability (determined without regard to interest, penalties, additions to the tax, and additional amounts) does not exceed \$10,000,

“(2) the taxpayer (and, if such liability relates to a joint return, the taxpayer’s spouse) has not, during any of the preceding 5 taxable years—

“(A) failed to file any return of tax imposed by subtitle A,

“(B) failed to pay any tax required to be shown on any such return, or

“(C) entered into an installment agreement under this section for payment of any tax imposed by subtitle A,

“(3) the Secretary determines that the taxpayer is financially unable to pay such liability in full when due (and the taxpayer submits such information as the Secretary may require to make such determination),

“(4) the agreement requires full payment of such liability within 3 years, and

“(5) the taxpayer agrees to comply with the provisions of this title for the period such agreement is in effect.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3468. PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS.

(a) **PROHIBITION.**—No officer or employee of the United States may request a taxpayer to waive the taxpayer’s right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

(b) **EXCEPTIONS.**—Subsection (a) shall not apply in any case where—

(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily, or

(2) the request by the officer or employee is made in person and the taxpayer’s attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer’s attorney or other representative.

Subtitle F—Disclosures to Taxpayers

SEC. 3501. EXPLANATION OF JOINT AND SEVERAL LIABILITY.

(a) **IN GENERAL.**—The Secretary of the Treasury or the Secretary’s delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, establish procedures to clearly alert married taxpayers of their joint and several liabilities on all appropriate publications and instructions.

(b) **RIGHT TO LIMIT LIABILITY.**—The procedures under subsection (a) shall include requirements that notice of an individual’s right to relief under section 6015 of the Internal Revenue Code of 1986 shall be included in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) and in any collection-related notices.

SEC. 3502. EXPLANATION OF TAXPAYERS’ RIGHTS IN INTERVIEWS WITH THE INTERNAL REVENUE SERVICE.

The Secretary of the Treasury or the Secretary’s delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) to more clearly inform taxpayers of their rights—

(1) to be represented at interviews with the Internal Revenue Service by any person authorized to practice before the Internal Revenue Service, and

(2) to suspend an interview pursuant to section 7521(b)(2) of the Internal Revenue Code of 1986.

SEC. 3503. DISCLOSURE OF CRITERIA FOR EXAMINATION SELECTION.

(a) **IN GENERAL.**—The Secretary of the Treasury or the Secretary’s delegate shall, as soon as

practicable, but not later than 180 days after the date of the enactment of this Act, incorporate into the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. Such statement shall not include any information the disclosure of which would be detrimental to law enforcement, but shall specify the general procedures used by the Internal Revenue Service, including whether taxpayers are selected for examination on the basis of information available in the media or on the basis of information provided to the Internal Revenue Service by informants.

(b) **TRANSMISSION TO COMMITTEES OF CONGRESS.**—The Secretary shall transmit drafts of the statement required under subsection (a) (or proposed revisions to any such statement) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the same day.

SEC. 3504. EXPLANATIONS OF APPEALS AND COLLECTION PROCESS.

The Secretary of the Treasury or the Secretary’s delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, include with any 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the entire process from examination through collection with respect to such proposed deficiency, including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process.

SEC. 3505. EXPLANATION OF REASON FOR REFUND DISALLOWANCE.

(a) **IN GENERAL.**—Section 6402 (relating to authority to make credits or refunds) is amended by adding at the end the following new subsection:

“(j) **EXPLANATION OF REASON FOR REFUND DISALLOWANCE.**—In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to disallowances after the 180th day after the date of the enactment of this Act.

SEC. 3506. STATEMENTS REGARDING INSTALLMENT AGREEMENTS.

The Secretary of the Treasury or the Secretary’s delegate shall, beginning not later than July 1, 2000, provide each taxpayer who has an installment agreement in effect under section 6159 of the Internal Revenue Code of 1986 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 3507. NOTIFICATION OF CHANGE IN TAX MATTERS PARTNER.

(a) **IN GENERAL.**—Section 6231(a)(7) (defining tax matters partner) is amended by adding at the end the following new sentence: “The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to selections of tax matters partners made by the Secretary of the Treasury after the date of the enactment of this Act.

SEC. 3508. DISCLOSURE TO TAXPAYERS.

The Secretary of the Treasury or the Secretary’s delegate shall ensure that any instructions booklet accompanying an individual Federal income tax return form (including forms 1040, 1040A, 1040EZ, and any similar or successor forms) shall include, in clear language, in conspicuous print, and in a conspicuous place,

a concise description of the conditions under which return information may be disclosed to any party outside the Internal Revenue Service, including disclosure to any State or agency, body, or commission (or legal representative) thereof.

SEC. 3509. DISCLOSURE OF CHIEF COUNSEL ADVICE.

(a) **IN GENERAL.**—Section 6110(b)(1) (defining written determination) is amended by striking “or technical advice memorandum” and inserting “technical advice memorandum, or Chief Counsel advice”.

(b) **CHIEF COUNSEL ADVICE.**—Section 6110 (relating to public inspection of written determinations) is amended by redesignating subsections (i), (j), (k), and (l) as subsections (j), (k), (l), and (m), respectively, and by inserting after subsection (h) the following new subsection:

“(i) **SPECIAL RULES FOR DISCLOSURE OF CHIEF COUNSEL ADVICE.**—

“(I) **CHIEF COUNSEL ADVICE DEFINED.**—

“(A) **IN GENERAL.**—For purposes of this section, the term ‘Chief Counsel advice’ means written advice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

“(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel, and

“(ii) conveys—

“(I) any legal interpretation of a revenue provision,

“(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision, or

“(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

“(B) **REVENUE PROVISION DEFINED.**—For purposes of subparagraph (A), the term ‘revenue provision’ means any existing or former internal revenue law, regulation, revenue ruling, revenue procedure, other published or unpublished guidance, or tax treaty, either in general or as applied to specific taxpayers or groups of specific taxpayers.

“(2) **ADDITIONAL DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.**—The Secretary may by regulation provide that this section shall apply to any advice or instruction prepared and issued by the Office of Chief Counsel which is not described in paragraph (1).

“(3) **DELETIONS FOR CHIEF COUNSEL ADVICE.**—In the case of Chief Counsel advice open to public inspection pursuant to this section—

“(A) paragraphs (2) through (7) of subsection (c) shall not apply, but

“(B) the Secretary may make deletions of material in accordance with subsections (b) and (c) of section 552 of title 5, United States Code, except that in applying subsection (b)(3) of such section, no statutory provision of this title shall be taken into account.

“(4) **NOTICE OF INTENTION TO DISCLOSE.**—

“(A) **NONTAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.**—In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

“(i) subsection (f)(1) shall not apply, and

“(ii) the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, complete any deletions described in subsection (c)(1) or paragraph (3) and make the Chief Counsel advice, as so edited, open for public inspection.

“(B) **TAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.**—In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary

may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source."

(c) CONFORMING AMENDMENTS.—

(1) Section 6110(f)(1) is amended by striking "The Secretary" and inserting "Except as otherwise provided by subsection (i), the Secretary".

(2) Paragraphs (1)(B) and (2) of section 6110(j)(1), as redesignated by this section, are amended by striking "subsection (g)" each place it appears and inserting "subsection (g) or (i)(4)(B)".

(3) Section 6110(k)(1)(B), as so redesignated, is amended by striking "subsection (c)" and inserting "subsection (c)(1) or (i)(3)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act.

(2) TRANSITION RULES.—The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

(A) One year after the date of the enactment of this Act, in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

(B) Eighteen months after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1994.

(C) Three years after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1992, and before January 1, 1994.

(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

(3) DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance.

Subtitle G—Low Income Taxpayer Clinics

SEC. 3601. LOW INCOME TAXPAYER CLINICS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by section 3411, is amended by adding at the end the following new section:

"SEC. 7526. LOW INCOME TAXPAYER CLINICS.

"(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make

grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED LOW INCOME TAXPAYER CLINIC.—

"(A) IN GENERAL.—The term 'qualified low income taxpayer clinic' means a clinic that—

"(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

"(ii)(I) represents low income taxpayers in controversies with the Internal Revenue Service, or

"(II) operates programs to inform individuals for whom English is a second language about their rights and responsibilities under this title.

"(B) REPRESENTATION OF LOW INCOME TAXPAYERS.—A clinic meets the requirements of subparagraph (A)(ii)(I) if—

"(i) at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget, and

"(ii) the amount in controversy for any taxable year generally does not exceed the amount specified in section 7463.

"(2) CLINIC.—The term 'clinic' includes—

"(A) a clinical program at an accredited law, business, or accounting school in which students represent low income taxpayers in controversies arising under this title, and

"(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

"(3) QUALIFIED REPRESENTATIVE.—The term 'qualified representative' means any individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service or the applicable court.

"(c) SPECIAL RULES AND LIMITATIONS.—

"(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than \$6,000,000 per year (exclusive of costs of administering the program) to grants under this section.

"(2) LIMITATION ON ANNUAL GRANTS TO A CLINIC.—The aggregate amount of grants which may be made under this section to a clinic for a year shall not exceed \$100,000.

"(3) MULTI-YEAR GRANTS.—Upon application of a qualified low income taxpayer clinic, the Secretary is authorized to award a multi-year grant not to exceed 3 years.

"(4) CRITERIA FOR AWARDS.—In determining whether to make a grant under this section, the Secretary shall consider—

"(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language,

"(B) the existence of other low income taxpayer clinics serving the same population,

"(C) the quality of the program offered by the low income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low income taxpayers, and

"(D) alternative funding sources available to the clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

"(5) REQUIREMENT OF MATCHING FUNDS.—A low income taxpayer clinic must provide matching funds on a dollar for dollar basis for all grants provided under this section. Matching funds may include—

"(A) the salary (including fringe benefits) of individuals performing services for the clinic, and

"(B) the cost of equipment used in the clinic. Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77, as amended by section 3411, is amended by adding at the end the following new item:

"Sec. 7526. Low income taxpayer clinics."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Other Matters

SEC. 3701. CATALOGING COMPLAINTS.

In collecting data for the report required under section 1211 of Taxpayer Bill of Rights 2 (Public Law 104-168), the Secretary of the Treasury or the Secretary's delegate shall, not later than January 1, 2000, maintain records of taxpayer complaints of misconduct by Internal Revenue Service employees on an individual employee basis.

SEC. 3702. ARCHIVE OF RECORDS OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(17) DISCLOSURE TO NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.—The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsections (f), (i)(7), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal."

(b) CONFORMING AMENDMENTS.—Section 6103(p) is amended—

(1) in paragraph (3)(A), by striking "or (16)" and inserting "(16), or (17)";

(2) in paragraph (4), by striking "or (14)" and inserting "(14), or (17)" in the matter preceding subparagraph (A), and

(3) in paragraph (4)(F)(ii), by striking "or (15)" and inserting "(15), or (17)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made by the Archivist of the United States after the date of the enactment of this Act.

SEC. 3703. PAYMENT OF TAXES.

The Secretary of the Treasury or the Secretary's delegate shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order made payable to the United States Treasury.

SEC. 3704. CLARIFICATION OF AUTHORITY OF SECRETARY RELATING TO THE MAKING OF ELECTIONS.

Subsection (d) of section 7805 is amended by striking "by regulations or forms".

SEC. 3705. IRS EMPLOYEE CONTACTS.

(a) NOTICE.—The Secretary of the Treasury or the Secretary's delegate shall provide that—

(1) any manually generated correspondence received by a taxpayer from the Internal Revenue Service shall include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee the taxpayer may contact with respect to the correspondence,

(2) any other correspondence or notice received by a taxpayer from the Internal Revenue Service shall include in a prominent manner a telephone number that the taxpayer may contact, and

(3) an Internal Revenue Service employee shall give a taxpayer during a telephone or personal contact the employee's name and unique identifying number.

(b) SINGLE CONTACT.—The Secretary of the Treasury or the Secretary's delegate shall develop a procedure under which, to the extent

practicable and if advantageous to the taxpayer, one Internal Revenue Service employee shall be assigned to handle a taxpayer's matter until it is resolved.

(c) **TELEPHONE HELPLINE IN SPANISH.**—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, that taxpayer questions on telephone helplines of the Internal Revenue Service are answered in Spanish.

(d) **OTHER TELEPHONE HELPLINE OPTIONS.**—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, on telephone helplines of the Internal Revenue Service an option for any taxpayer to talk to an Internal Revenue Service employee during normal business hours. The person shall direct phone questions of the taxpayer to other Internal Revenue Service personnel who can provide assistance to the taxpayer.

(e) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, this section shall take effect 60 days after the date of the enactment of this Act.

(2) **SUBSECTION (c).**—Subsection (c) shall take effect on January 1, 2000.

(3) **SUBSECTION (d).**—Subsection (d) shall take effect on January 1, 2000.

(4) **UNIQUE IDENTIFYING NUMBER.**—Any requirement under this section to provide a unique identifying number shall take effect 6 months after the date of the enactment of this Act.

SEC. 3706. USE OF PSEUDONYMS BY IRS EMPLOYEES.

(a) **IN GENERAL.**—Any employee of the Internal Revenue Service may use a pseudonym only if—

(1) adequate justification for the use of a pseudonym is provided by the employee, including protection of personal safety, and

(2) such use is approved by the employee's supervisor before the pseudonym is used.

(b) **EFFECTIVE DATE.**—Subsection (a) shall apply to requests made after the date of the enactment of this Act.

SEC. 3707. ILLEGAL TAX PROTESTER DESIGNATION.

(a) **PROHIBITION.**—The officers and employees of the Internal Revenue Service—

(1) shall not designate taxpayers as illegal tax protesters (or any similar designation), and

(2) in the case of any such designation made on or before the date of the enactment of this Act—

(A) shall remove such designation from the individual master file, and

(B) shall disregard any such designation not located in the individual master file.

(b) **DESIGNATION OF NONFILERS ALLOWED.**—An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns.

(c) **EFFECTIVE DATE.**—The provisions of this section shall take effect on the date of the enactment of this Act, except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999.

SEC. 3708. PROVISION OF CONFIDENTIAL INFORMATION TO CONGRESS BY WHISTLEBLOWERS.

(a) **IN GENERAL.**—Section 6103(f) (relating to disclosure to committees of Congress) is amended by adding at the end the following new paragraph:

“(5) **DISCLOSURE BY WHISTLEBLOWER.**—Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1) or any individual authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3709. LISTING OF LOCAL IRS TELEPHONE NUMBERS AND ADDRESSES.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, provide that the local telephone numbers and addresses of Internal Revenue Service offices located in any particular area be listed in a telephone book for that area.

SEC. 3710. IDENTIFICATION OF RETURN PREPARERS.

(a) **IN GENERAL.**—The last sentence of section 6109(a) (relating to identifying numbers) is amended by striking “For purposes of this subsection” and inserting “For purposes of paragraphs (1), (2), and (3)”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3711. OFFSET OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS AGAINST OVERPAYMENTS.

(a) **IN GENERAL.**—Section 6402 (relating to authority to make credits or refunds), as amended by section 3505, is amended by redesignating subsections (e) through (j) as subsections (f) through (k), respectively, and by inserting after subsection (d) the following new subsection:

“(e) **COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.**—

“(1) **IN GENERAL.**—Upon receiving notice from any State that a named person owes a past-due, legally enforceable State income tax obligation to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—

“(A) reduce the amount of any overpayment payable to such person by the amount of such State income tax obligation;

“(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

“(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a past-due, legally enforceable State income tax obligation.

If an offset is made pursuant to a joint return, the notice under subparagraph (B) shall include the names, taxpayer identification numbers, and addresses of each person filing such return.

“(2) **OFFSET PERMITTED ONLY AGAINST RESIDENTS OF STATE SEEKING OFFSET.**—Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset.

“(3) **PRIORITIES FOR OFFSET.**—Any overpayment by a person shall be reduced pursuant to this subsection—

“(A) after such overpayment is reduced pursuant to—

“(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment,

“(ii) subsection (c) with respect to past-due support, and

“(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency, and

“(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from 1 or more agencies of the State of more than 1 debt subject to paragraph (1) that is owed by such person to such an agency, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

“(4) **NOTICE; CONSIDERATION OF EVIDENCE.**—No State may take action under this subsection until such State—

“(A) notifies by certified mail with return receipt the person owing the past-due State income tax liability that the State proposes to take action pursuant to this section,

“(B) gives such person at least 60 days to present evidence that all or part of such liability is not past-due or not legally enforceable,

“(C) considers any evidence presented by such person and determines that an amount of such debt is past-due and legally enforceable, and

“(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such State income tax obligation.

“(5) **PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATION.**—For purposes of this subsection, the term ‘past-due, legally enforceable State income tax obligation’ means a debt—

“(A)(i) which resulted from—

“(I) a judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due, or

“(II) a determination after an administrative hearing which has determined an amount of State income tax to be due, and

“(ii) which is no longer subject to judicial review, or

“(B) which resulted from a State income tax which has been assessed but not collected, the time for redetermination of which has expired, and which has not been delinquent for more than 10 years.

For purposes of this paragraph, the term ‘State income tax’ includes any local income tax administered by the chief tax administration agency of the State.

“(6) **REGULATIONS.**—The Secretary shall issue regulations prescribing the time and manner in which States must submit notices of past-due, legally enforceable State income tax obligations and the necessary information that must be contained in or accompany such notices. The regulations shall specify the types of State income taxes and the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied. The regulations may require States to pay a fee to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

“(7) **ERRONEOUS PAYMENT TO STATE.**—Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).”.

(b) **DISCLOSURE OF CERTAIN INFORMATION TO STATES REQUESTING REFUND OFFSETS FOR PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.**—

(1) Paragraph (10) of section 6103(l) is amended by striking “(c) or (d)” each place it appears and inserting “(c), (d), or (e)”.

(2) The paragraph heading for such paragraph (10) is amended by striking “SECTION 6402(c) OR 6402(d)” and inserting “SUBSECTION (c), (d), OR (e) OF SECTION 6402”.

(c) **CONFORMING AMENDMENTS.**—

(1) Subsection (a) of section 6402 is amended by striking “(c) and (d)” and inserting “(c), (d), and (e)”.

(2) Paragraph (2) of section 6402(d) is amended by striking “and before such overpayment” and inserting “and before such overpayment is reduced pursuant to subsection (e) and before such overpayment”.

(3) Subsection (f) of section 6402, as redesignated by subsection (a), is amended—

(A) by striking “(c) or (d)” and inserting “(c), (d), or (e)”, and

(B) by striking "Federal agency" and inserting "Federal agency or State".

(4) Subsection (h) of section 6402, as redesignated by subsection (a), is amended by striking "subsection (c)" and inserting "subsection (c) or (e)".

(d) EFFECTIVE DATE.—The amendments made by this section (other than subsection (d)) shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1999.

SEC. 3712. REPORTING REQUIREMENTS IN CONNECTION WITH EDUCATION TAX CREDIT.

(a) AMOUNTS TO BE REPORTED.—Subparagraph (C) of section 6050S(b)(2) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

"(ii) the amount of any grant received by such individual for payment of costs of attendance and processed by the person making such return during such calendar year,"

(2) in clause (iii) (as so redesignated), by inserting "by the person making such return" after "year", and

(3) in clause (iv) (as so redesignated), by inserting "and" at the end.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6050S(d) is amended by striking "aggregate".

(2) Subsection (e) of section 6050S is amended by inserting "(without regard to subsection (g)(2) thereof)" after "section 25A".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed with respect to taxable years beginning after December 31, 1998.

Subtitle I—Studies

SEC. 3801. ADMINISTRATION OF PENALTIES AND INTEREST.

The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study—

(1) reviewing the administration and implementation by the Internal Revenue Service of the interest and penalty provisions of the Internal Revenue Code of 1986 (including the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989), and

(2) making any legislative and administrative recommendations the Committee or the Secretary deems appropriate to simplify penalty or interest administration and reduce taxpayer burden.

Such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 1 year after the date of the enactment of this Act.

SEC. 3802. CONFIDENTIALITY OF TAX RETURN INFORMATION.

The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study of the scope and use of provisions regarding taxpayer confidentiality, and shall report the findings of such study, together with such recommendations as the Committee or the Secretary deems appropriate, to the Congress not later than 18 months after the date of the enactment of this Act. Such study shall examine—

(1) the present protections for taxpayer privacy,

(2) any need for third parties to use tax return information,

(3) whether greater levels of voluntary compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns,

(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with such provisions in other Federal law, including section 552a of title 5, United States Code (commonly known as the "Freedom of Information Act"),

(5) the impact on taxpayer privacy of the sharing of income tax return information for

purposes of enforcement of State and local tax laws other than income tax laws, and including the impact on the taxpayer privacy intended to be protected at the Federal, State, and local levels under Public Law 105-35, the Taxpayer Browsing Protection Act of 1997, and

(6) whether the public interest would be served by greater disclosure of information relating to tax exempt organizations described in section 501 of the Internal Revenue Code of 1986.

SEC. 3803. STUDY OF NONCOMPLIANCE WITH INTERNAL REVENUE LAWS BY TAXPAYERS.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury and the Commissioner of Internal Revenue shall conduct jointly a study, in consultation with the Joint Committee on Taxation, of the noncompliance with internal revenue laws by taxpayers (including willful noncompliance and noncompliance due to tax law complexity or other factors) and report the findings of such study to Congress.

SEC. 3804. STUDY OF PAYMENTS MADE FOR DESTRUCTION OF UNDERPAYMENTS AND FRAUD.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986 including—

(1) an analysis of the present use of such section and the results of such use, and

(2) any legislative or administrative recommendations regarding the provisions of such section and its application.

TITLE IV—CONGRESSIONAL ACCOUNTABILITY FOR THE INTERNAL REVENUE SERVICE

Subtitle A—Oversight

SEC. 4001. EXPANSION OF DUTIES OF THE JOINT COMMITTEE ON TAXATION.

(a) IN GENERAL.—Section 8021 (relating to the powers of the Joint Committee on Taxation) is amended by adding at the end the following new subsections:

"(e) INVESTIGATIONS.—The Joint Committee shall review all requests (other than requests by the chairman or ranking member of a Committee or Subcommittee) for investigations of the Internal Revenue Service by the General Accounting Office, and approve such requests when appropriate, with a view towards eliminating overlapping investigations, ensuring that the General Accounting Office has the capacity to handle the investigation, and ensuring that investigations focus on areas of primary importance to tax administration.

"(f) RELATING TO JOINT REVIEWS.—

"(1) IN GENERAL.—The Chief of Staff, and the staff of the Joint Committee, shall provide such assistance as is required for joint reviews described in paragraph (2).

"(2) JOINT REVIEWS.—Before June 1 of each calendar year after 1998 and before 2004, there shall be a joint review of the strategic plans and budget for the Internal Revenue Service and such other matters as the Chairman of the Joint Committee deems appropriate. Such joint review shall be held at the call of the Chairman of the Joint Committee and shall include two members of the majority and one member of the minority from each of the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives."

(b) EFFECTIVE DATES.—

(1) Subsection (e) of section 8021 of the Internal Revenue Code of 1986, as added by subsection (a) of this section, shall apply to requests made after the date of the enactment of this Act.

(2) Subsection (f) of such section shall take effect on the date of the enactment of this Act.

SEC. 4002. COORDINATED OVERSIGHT REPORTS.

(a) IN GENERAL.—Paragraph (3) of section 8022 (relating to the duties of the Joint Committee on Taxation) is amended to read as follows:

"(3) REPORTS.—

"(A) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

"(B) Subject to amounts specifically appropriated to carry out this subparagraph, to report, at least once each Congress, to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable.

"(C) To report, for each calendar year after 1998 and before 2004, to the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, with respect to—

"(i) strategic and business plans for the Internal Revenue Service;

"(ii) progress of the Internal Revenue Service in meeting its objectives;

"(iii) the budget for the Internal Revenue Service and whether it supports its objectives;

"(iv) progress of the Internal Revenue Service in improving taxpayer service and compliance;

"(v) progress of the Internal Revenue Service on technology modernization; and

"(vi) the annual filing season."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Century Date Change

SEC. 4011. CENTURY DATE CHANGE.

It is the sense of Congress that—

(1) the Internal Revenue Service should place a high priority on resolving the century date change computing problems, and

(2) the Internal Revenue Service efforts to resolve the century date change computing problems should be funded fully to provide for certain resolution of such problems.

Subtitle C—Tax Law Complexity

SEC. 4021. ROLE OF THE INTERNAL REVENUE SERVICE.

It is the sense of Congress that the Internal Revenue Service should provide Congress with an independent view of tax administration, and that during the legislative process, the tax writing committees of Congress should hear from front-line technical experts at the Internal Revenue Service with respect to the administrability of pending amendments to the Internal Revenue Code of 1986.

SEC. 4022. TAX LAW COMPLEXITY ANALYSIS.

(a) COMMISSIONER STUDY.—

(1) IN GENERAL.—The Commissioner of Internal Revenue shall conduct each year after 1998 an analysis of the sources of complexity in administration of the Federal tax laws. Such analysis may include an analysis of—

(A) questions frequently asked by taxpayers with respect to return filing,

(B) common errors made by taxpayers in filling out their returns,

(C) areas of law which frequently result in disagreements between taxpayers and the Internal Revenue Service,

(D) major areas of law in which there is no (or incomplete) published guidance or in which the law is uncertain,

(E) areas in which revenue officers make frequent errors interpreting or applying the law,

(F) the impact of recent legislation on complexity, and

(G) forms supplied by the Internal Revenue Service, including the time it takes for taxpayers to complete and review forms, the number of taxpayers who use each form, and how recent legislation has affected the time it takes to complete and review forms.

(2) REPORT.—The Commissioner shall not later than March 1 of each year report the results of the analysis conducted under paragraph (1) for the preceding year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The report shall include any recommendations—

(A) for reducing the complexity of the administration of Federal tax laws, and

(B) for repeal or modification of any provision the Commissioner believes adds undue and unnecessary complexity to the administration of the Federal tax laws.

(b) ANALYSIS TO ACCOMPANY CERTAIN LEGISLATION.—

(1) IN GENERAL.—The Joint Committee on Taxation, in consultation with the Internal Revenue Service and the Department of the Treasury, shall include a tax complexity analysis in each report for legislation, or provide such analysis to members of the committee reporting the legislation as soon as practicable after the report is filed, if—

(A) such legislation is reported by the Committee on Finance in the Senate, the Committee on Ways and Means of the House of Representatives, or any committee of conference, and

(B) such legislation includes a provision which would directly or indirectly amend the Internal Revenue Code of 1986 and which has widespread applicability to individuals or small businesses.

(2) TAX COMPLEXITY ANALYSIS.—For purposes of this subsection, the term “tax complexity analysis” means, with respect to any legislation, a report on the complexity and administrative difficulties of each provision described in paragraph (1)(B) which—

(A) includes—

(i) an estimate of the number of taxpayers affected by the provision, and

(ii) if applicable, the income level of taxpayers affected by the provision, and

(B) should include (if determinable)—

(i) the extent to which tax forms supplied by the Internal Revenue Service would require revision and whether any new forms would be required,

(ii) the extent to which taxpayers would be required to keep additional records,

(iii) the estimated cost to taxpayers to comply with the provision,

(iv) the extent to which enactment of the provision would require the Internal Revenue Service to develop or modify regulatory guidance,

(v) the extent to which the provision may result in disagreements between taxpayers and the Internal Revenue Service, and

(vi) any expected impact on the Internal Revenue Service from the provision (including the impact on internal training, revision of the Internal Revenue Manual, reprogramming of computers, and the extent to which the Internal Revenue Service would be required to divert or redirect resources in response to the provision).

(3) LEGISLATION SUBJECT TO POINT OF ORDER IN HOUSE OF REPRESENTATIVES.—

(A) LEGISLATION REPORTED BY COMMITTEE ON WAYS AND MEANS.—Clause 2(1) of rule XI of the Rules of the House of Representatives is amended by adding at the end the following new subparagraph:

“(8) The report of the Committee on Ways and Means on any bill or joint resolution containing any provision amending the Internal Revenue Code of 1986 shall include a Tax Complexity Analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 unless the Committee on Ways and Means causes to have such Analysis printed in the Congressional Record prior to the consideration of the bill or joint resolution.”.

(B) CONFERENCE REPORTS.—Rule XXVIII of the Rules of the House of Representatives is amended by adding at the end the following new clause:

“7. It shall not be in order to consider the report of a committee of conference which con-

tains any provision amending the Internal Revenue Code of 1986 unless—

“(a) the accompanying joint explanatory statement contains a Tax Complexity Analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, or

“(b) such Analysis is printed in the Congressional Record prior to the consideration of the report.”.

(C) RULES OF HOUSE OF REPRESENTATIVES.—This paragraph is enacted by the House of Representatives—

(i) as an exercise of the rulemaking power of the House of Representatives, and as such it is deemed a part of the Rules of the House, and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(4) EFFECTIVE DATE.—This subsection shall apply to legislation considered on and after January 1, 1999.

TITLE V—ADDITIONAL PROVISIONS

SEC. 5001. LOWER CAPITAL GAINS RATES TO APPLY TO PROPERTY HELD MORE THAN 1 YEAR.

(a) GENERAL RULE.—

(1) Paragraph (5) of section 1(h) is amended to read as follows:

“(5) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term ‘28-percent rate gain’ means the excess (if any) of—

“(A) the sum of—

“(i) collectibles gain, and

“(ii) section 1202 gain, over

“(B) the sum of—

“(i) collectibles loss,

“(ii) the net short-term capital loss, and

“(iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.”.

(2) Subparagraph (A) of section 1(h)(6) is amended by striking “18 months” and inserting “1 year”.

(3) Clauses (i) and (ii) of section 1(h)(7)(A) are amended to read as follows:

“(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

“(ii) the excess (if any) of—

“(I) the amount described in paragraph (5)(B), over

“(II) the amount described in paragraph (5)(A).”.

(4) So much of paragraph (13) of section 1(h) as precedes subparagraph (C) is amended to read as follows:

“(13) SPECIAL RULES.—

“(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

“(i) the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph)—

“(I) which is properly taken into account for the portion of the taxable year before May 7, 1997, or

“(II) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998,

“(ii) the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph)—

“(I) which is properly taken into account for the portion of the taxable year before May 7, 1997, or

“(II) from property held not more than 18 months which is properly taken into account for

the portion of the taxable year after July 28, 1997, and before January 1, 1998, and

“(iii) subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

“(B) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN.—The amount determined under paragraph (7)(A) shall not include gain—

“(i) which is properly taken into account for the portion of the taxable year before May 7, 1997, or

“(ii) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.”.

(5) Paragraphs (11) and (12) of section 1223, and section 1235(a), are each amended by striking “18 months” each place it appears and inserting “1 year”.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after December 31, 1997.

(2) SUBSECTION (a)(5).—The amendments made by subsection (a)(5) shall take effect on January 1, 1998.

SEC. 5002. CLARIFICATION OF EXCLUSION OF MEALS FOR CERTAIN EMPLOYEES.

(a) IN GENERAL.—Subsection (b) of section 119 (relating to meals or lodging furnished for the convenience of the employer) is amended by adding at the end the following new paragraph:

“(4) MEALS FURNISHED TO EMPLOYEES ON BUSINESS PREMISES WHERE MEALS OF MOST EMPLOYEES ARE OTHERWISE EXCLUDABLE.—All meals furnished on the business premises of an employer to such employer’s employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 5003. CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS.

(a) FINDINGS AND POLICY.—

(1) FINDINGS.—The Congress makes the following findings:

(A) Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as “most-favored-nation” treatment, has been a cornerstone of United States trade policy.

(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term “most-favored-nation” is a misnomer which has led to public misunderstanding.

(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as “most favored”. To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

(D) The term “normal trade relations” is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

(2) POLICY.—It is the sense of the Congress that—

(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

(B) accordingly, the term “normal trade relations” should, where appropriate, be substituted for the term “most-favored-nation”.

(b) CHANGE IN TERMINOLOGY.—

(1) TRADE EXPANSION ACT OF 1962.—The heading for section 251 of the Trade Expansion Act of 1962 (19 U.S.C. 1881) is amended to read as follows: **“NORMAL TRADE RELATIONS”**.

(2) TRADE ACT OF 1974.—(A) Section 402 of the Trade Act of 1974 (19 U.S.C. 2432) is amended by striking “(most-favored-nation treatment)” each place it appears and inserting “(normal trade relations)”.

(B) Section 601(9) of the Trade Act of 1974 (19 U.S.C. 2481(9)) is amended by striking “most-favored-nation treatment” and inserting “trade treatment based on normal trade relations (known under international law as most-favored-nation treatment)”.

(3) CFTA.—Section 302(a)(3)(C) of the United States Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended by striking “the most-favored-nation rate of duty” each place it appears and inserting “the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States”.

(4) NAFTA.—Section 202(n) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3332(n)) is amended by striking “most-favored-nation”.

(5) URUGUAY ROUND AGREEMENTS ACT.—Section 135(a)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3555(a)(2)) is amended by striking “most-favored-nation” and inserting “normal trade relations”.

(6) SEED ACT.—Section 2(c)(11) of the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5401(c)(11)) is amended—

(A) by striking “(commonly referred to as ‘most favored nation status’)”;

(B) by striking “MOST FAVORED NATION TRADE STATUS” in the heading and inserting “NORMAL TRADE RELATIONS”.

(7) UNITED STATES-HONG KONG POLICY ACT OF 1992.—Section 103(4) of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5713(4)) is amended by striking “(commonly referred to as ‘most-favored-nation status’)”.

(c) SAVINGS PROVISIONS.—Nothing in this section shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of “most-favored-nation” (or “most favored nation”) treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act, or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.

TITLE VI—TECHNICAL CORRECTIONS

SEC. 6001. SHORT TITLE; COORDINATION WITH OTHER TITLES.

(a) SHORT TITLE.—This title may be cited as the “Tax Technical Corrections Act of 1998”.

(b) COORDINATION WITH OTHER TITLES.—For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

SEC. 6002. DEFINITIONS.

For purposes of this title—

(1) 1986 CODE.—The term “1986 Code” means the Internal Revenue Code of 1986.

(2) 1997 ACT.—The term “1997 Act” means the Taxpayer Relief Act of 1997.

SEC. 6003. AMENDMENTS RELATED TO TITLE I OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 101(a) OF 1997 ACT.—

(1) Subsection (d) of section 24 of the 1986 Code is amended—

(A) by striking paragraphs (3) and (4),

(B) by redesignating paragraph (5) as paragraph (3), and

(C) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

“(1) IN GENERAL.—In the case of a taxpayer with 3 or more qualifying children for any taxable year, the aggregate credits allowed under subpart C shall be increased by the lesser of—

“(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a), or

“(B) the amount by which the aggregate amount of credits allowed by this subpart (without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the excess (if any) of—

“(i) the taxpayer’s social security taxes for the taxable year, over

“(ii) the credit allowed under section 32 (determined without regard to subsection (n)) for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a).

“(2) REDUCTION OF CREDIT TO TAXPAYER SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

“(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

“(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year.”

(2) Paragraph (3) of section 24(d) of the 1986 Code (as redesignated by paragraph (1)) is amended by striking “paragraph (3)” and inserting “paragraph (1)”.

(b) AMENDMENTS RELATED TO SECTION 101(b) OF 1997 ACT.—

(1) The subsection (m) of section 32 of the 1986 Code added by section 101(b) of the 1997 Act is amended to read as follows:

“(n) SUPPLEMENTAL CHILD CREDIT.—

“(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24(a) for the taxable year, the credit otherwise allowable under this section shall be increased by the lesser of—

“(A) the excess of—

“(i) the credits allowed under subpart A (determined after the application of section 26 and without regard to this subsection), over

“(ii) the credits which would be allowed under subpart A after the application of section 26, determined without regard to section 24 and this subsection, or

“(B) the excess of—

“(i) the sum of the credits allowed under this part (determined without regard to sections 31, 33, and 34 and this subsection), over

“(ii) the sum of the regular tax and the social security taxes (as defined in section 24(d)).

The credit determined under this subsection shall be allowed without regard to any other provision of this section, including subsection (d).

“(2) COORDINATION WITH OTHER CREDITS.—The amount of the credit under this subsection shall reduce the amount of the credits otherwise allowable under subpart A for the taxable year (determined after the application of section 26), but the amount of the credit under this subsection (and such reduction) shall not be taken into account in determining the amount of any other credit allowable under this part.”

SEC. 6004. AMENDMENTS RELATED TO TITLE II OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 201 OF 1997 ACT.—

(1) The item relating to section 25A in the table of sections for subpart A of part IV of subchapter A of chapter 1 of the 1986 Code is amended to read as follows:

“Sec. 25A. Hope and Lifetime Learning credits.”.

(2) Subsection (a) of section 6050S of the 1986 Code is amended to read as follows:

“(a) IN GENERAL.—Any person—

“(1) which is an eligible educational institution—

“(A) which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year, or

“(B) which makes reimbursements or refunds (or similar amounts) to any individual of qualified tuition and related expenses,

“(2) which is engaged in a trade or business of making payments to any individual under an insurance arrangement as reimbursements or refunds (or similar amounts) of qualified tuition and related expenses, or

“(3) except as provided in regulations, which is engaged in a trade or business and, in the course of which, receives from any individual interest aggregating \$600 or more for any calendar year on 1 or more qualified education loans,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe.”

(3) Subparagraph (A) of section 201(c)(2) of the 1997 Act is amended to read as follows:

“(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, and by inserting after clause (ix) the following new clause:

“(x) section 6050S (relating to returns relating to payments for qualified tuition and related expenses).”

(b) AMENDMENTS RELATED TO SECTION 202 OF 1997 ACT.—

(1) Paragraph (1) of section 221(e) of the 1986 Code is amended by inserting “by the taxpayer solely” after “incurred” the first place it appears.

(2) Subsection (d) of section 221 of the 1986 Code is amended by adding at the end the following new sentence: “Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.”

(c) AMENDMENTS RELATED TO SECTION 211 OF 1997 ACT.—

(1) Paragraph (3) of section 135(c) of the 1986 Code is amended to read as follows:

“(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The term ‘eligible educational institution’ has the meaning given such term by section 529(e)(5).”

(2) Subparagraph (A) of section 529(c)(3) of the 1986 Code is amended by striking “section 72(b)” and inserting “section 72”.

(3) Paragraph (2) of section 529(e) of the 1986 Code is amended to read as follows:

“(2) MEMBER OF FAMILY.—The term ‘member of the family’ means, with respect to any designated beneficiary—

“(A) the spouse of such beneficiary,

“(B) an individual who bears a relationship to such beneficiary which is described in paragraphs (1) through (8) of section 152(a), and

“(C) the spouse of any individual described in subparagraph (B).”

(d) AMENDMENTS RELATED TO SECTION 213 OF 1997 ACT.—

(1) Section 530(b)(1) of the 1986 Code (defining education individual retirement account) is amended by inserting “an individual who is” before “the designated beneficiary” in the material preceding subparagraph (A).

(2)(A) Section 530(b)(1)(E) of the 1986 Code (defining education individual retirement account) is amended to read as follows:

“(E) Except as provided in subsection (d)(7), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days

after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary."

(B) Paragraph (7) of section 530(d) of the 1986 Code is amended by inserting at the end the following new sentence: "In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8)."

(C) Subsection (d) of section 530 of the 1986 Code is amended by adding at the end the following new paragraph:

"(8) DEEMED DISTRIBUTION ON REQUIRED DISTRIBUTION DATE.—In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period."

(3)(A) Paragraph (1) of section 530(d) of the 1986 Code is amended by striking "section 72(b)" and inserting "section 72".

(B) Subsection (e) of section 72 of the 1986 Code is amended by inserting after paragraph (8) the following new paragraph:

"(9) EXTENSION OF PARAGRAPH (2)(B) TO QUALIFIED STATE TUITION PROGRAMS AND EDUCATIONAL INDIVIDUAL RETIREMENT ACCOUNTS.—Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified State tuition program (as defined in section 529(b)) or under an education individual retirement account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph."

(4) Paragraph (2) of section 135(d) of the 1986 Code is amended to read as follows:

"(2) COORDINATION WITH OTHER HIGHER EDUCATION BENEFITS.—The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

"(A) the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses, and

"(B) the amount of such expenses which are taken into account in determining the exclusion under section 530(d)(2)."

(5) Section 530(d)(2) of the 1986 Code (relating to distributions for qualified higher education expenses) is amended by adding at the end the following new subparagraph:

"(D) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the taxpayer under any other section of this chapter for any qualified education expenses to the extent taken into account in determining the amount of the exclusion under this paragraph."

(6) Section 530(d)(4)(B) of the 1986 Code (relating to exceptions) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end the following new clause:

"(iv) an amount which is includable in gross income solely because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2) for the taxable year."

(7) So much of section 530(d)(4)(C) of the 1986 Code as precedes clause (ii) thereof is amended to read as follows:

"(C) CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

"(i) such distribution is made on or before the day prescribed by law (including extensions of time) for filing the beneficiary's return of tax for the taxable year or, if the beneficiary is not re-

quired to file such a return, the 15th day of the 4th month of the taxable year following the taxable year, and"

(8)(A) Paragraph (5) of section 530(d) of the 1986 Code is amended by striking the first sentence and inserting the following new sentence: "Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date."

(B) Paragraph (6) of section 530(d) of the 1986 Code is amended by inserting before the period "and has not attained age 30 as of the date of such change".

(9) Subparagraph (C) of section 135(c)(2) of the 1986 Code is amended—

(A) by inserting "AND EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS" in the heading after "PROGRAM", and

(B) by striking "section 529(c)(3)(A)" and inserting "section 72".

(10)(A) Paragraph (1) of section 4973(e) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means the sum of—

"(A) the amount by which the amount contributed for the taxable year to such accounts exceeds \$500 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year),

"(B) if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year, and

"(C) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(i) the distributions out of the accounts for the taxable year (other than rollover distributions), and

"(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year."

(B) Paragraph (2) of section 4973(e) of the 1986 Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(e) AMENDMENTS RELATED TO SECTION 224 OF 1997 ACT.—

(1) Clauses (vi) and (vii) of section 170(e)(6)(B) of the 1986 Code are each amended by striking "entity's" and inserting "donee's".

(2) Clause (iv) of section 170(e)(6)(B) of the 1986 Code is amended by striking "organization or entity" and inserting "donee".

(3) Subclause (I) of section 170(e)(6)(C)(ii) of the 1986 Code is amended by striking "an entity" and inserting "a donee".

(4) Section 170(e)(6)(F) of the 1986 Code (relating to termination) is amended by striking "1999" and inserting "2000".

(f) AMENDMENTS RELATED TO SECTION 225 OF 1997 ACT.—

(1) The last sentence of section 108(f)(2) of the 1986 Code is amended to read as follows:

"The term 'student loan' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii)."

(2) Section 108(f)(3) of the 1986 Code is amended by striking "(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))".

(g) AMENDMENTS RELATED TO SECTION 226 OF 1997 ACT.—

(1) Section 226(a) of the 1997 Act is amended by striking "section 1397E" and inserting "section 1397D".

(2) Section 1397E(d)(4)(B) of the 1986 Code is amended by striking "local education agency as defined" and inserting "local educational agency as defined".

(3) Section 1397E is amended by adding at the end the following new subsection:

"(h) CREDIT TREATED AS ALLOWED UNDER PART IV OF SUBCHAPTER A.—For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter."

(4) Subsection (g) of section 1397E of the 1986 Code is amended by inserting "(determined without regard to subsection (c))" after "section".

(5) Subparagraph (D) of section 42(j)(4) of the 1986 Code is amended by striking "subpart A, B, D, or G of this part" and inserting "this chapter".

(6) Paragraph (4) of section 49(b) of the 1986 Code is amended by striking "subpart A, B, D, or G" and inserting "this chapter".

(7) Subparagraph (C) of section 50(a)(5) of the 1986 Code is amended by striking "subpart A, B, D, or G" and inserting "this chapter".

SEC. 6005. AMENDMENTS RELATED TO TITLE III OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 301 OF 1997 ACT.—

(1) Section 219(g) of the 1986 Code is amended—

(A) by inserting "or the individual's spouse" after "individual" in paragraph (1), and

(B) by striking paragraph (7) and inserting:

"(7) SPECIAL RULE FOR SPOUSES WHO ARE NOT ACTIVE PARTICIPANTS.—If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

"(A) the applicable dollar amount under paragraph (3)(B)(i) shall be \$150,000, and

"(B) the amount applicable under paragraph (2)(A)(ii) shall be \$10,000."

(2) Paragraph (2) of section 301(a) of the 1997 Act is amended by inserting "after '\$10,000'" before the period.

(b) AMENDMENTS RELATED TO SECTION 302 OF 1997 ACT.—

(1) Section 408A(c)(3)(A) of the 1986 Code is amended by striking "shall be reduced" and inserting "shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced".

(2) Section 408A(c)(3) of the 1986 Code (relating to limits based on modified adjusted gross income) is amended—

(A) by inserting "or a married individual filing a separate return" after "joint return" in subparagraph (A)(ii),

(B) in subparagraph (B)—

(i) by inserting ", for the taxable year of the distribution to which such contribution relates" after "if", and

(ii) by striking "for such taxable year" in clause (i), and

(C) by striking "and the deduction under section 219 shall be taken into account" in subparagraph (C)(i).

(3)(A) Section 408A(d)(2) of the 1986 Code (defining qualified distribution) is amended by striking subparagraph (B) and inserting the following new subparagraph:

"(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the 1st taxable year for

which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual."

(B) Section 408A(d)(2) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AND EARNINGS.—The term 'qualified distribution' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution."

(4) Section 408A(d)(3) of the 1986 Code (relating to rollovers from IRAs other than Roth IRAs) is amended—

(A) by striking clause (iii) of subparagraph (A) and inserting:

"(iii) unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year."; and

(B) by adding at the end the following new subparagraph:

"(F) SPECIAL RULES FOR CONTRIBUTIONS TO WHICH 4-YEAR AVERAGING APPLIES.—In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

"(i) ACCELERATION OF INCLUSION.—

"(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

"(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

"(ii) DEATH OF DISTRIBUTTEE.—

"(I) IN GENERAL.—If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

"(II) SPECIAL RULE FOR SURVIVING SPOUSE.—If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

"(G) SPECIAL RULE FOR APPLYING SECTION 72.—

"(i) IN GENERAL.—If—

"(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph, and

"(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

"(ii) LIMITATION.—Clause (i) shall apply only to the extent of the amount of the qualified roll-

over contribution includible in gross income under subparagraph (A)(i)."

(5)(A) Section 408A(d)(4) of the 1986 Code is amended to read as follows:

"(4) AGGREGATION AND ORDERING RULES.—

"(A) AGGREGATION RULES.—Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

"(B) ORDERING RULES.—For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

"(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA, and

"(ii) from such contributions in the following order:

"(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

"(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income."

(B) Section 408A(d)(1) of the 1986 Code is amended to read as follows:

"(1) EXCLUSION.—Any qualified distribution from a Roth IRA shall not be includible in gross income."

(6)(A) Section 408A(d) of the 1986 Code (relating to distribution rules) is amended by adding at the end the following new paragraph:

"(6) TAXPAYER MAY MAKE ADJUSTMENTS BEFORE DUE DATE.—

"(A) IN GENERAL.—Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

"(B) SPECIAL RULES.—

"(i) TRANSFER OF EARNINGS.—Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

"(ii) NO DEDUCTION.—Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan."

(B) Section 408A(d)(3) of the 1986 Code, as amended by this subsection, is amended by striking subparagraph (D) and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively.

(7) Section 408A(d) of the 1986 Code, as amended by paragraph (6), is amended by adding at the end the following new paragraph:

"(7) DUE DATE.—For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year."

(8)(A) Section 4973(f) of the 1986 Code is amended—

(i) by striking "such accounts" in paragraph (1)(A) and inserting "Roth IRAs", and

(ii) by striking "to the accounts" in paragraph (2)(B) and inserting "by the individual to all individual retirement plans".

(B) Section 4973(b) of the 1986 Code is amended—

(i) by inserting "a contribution to a Roth IRA or" after "other than" in paragraph (1)(A), and

(ii) by inserting "(including the amount contributed to a Roth IRA)" after "annuities" in paragraph (2)(C).

(C) Section 302(b) of the 1997 Act is amended by striking "Section 4973(b)" and inserting "Section 4973".

(9) Section 408A of the 1986 Code is amended by adding at the end the following new subsection:

"(f) INDIVIDUAL RETIREMENT PLAN.—For purposes of this section—

"(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA, and

"(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B)."

(c) AMENDMENTS RELATED TO SECTION 303 OF 1997 ACT.—

(1) Section 72(t)(8)(E) of the 1986 Code is amended—

(A) by striking "120 days" and inserting "120th day", and

(B) by striking "60 days" and inserting "60th day".

(2)(A) Section 402(c)(4) of the 1986 Code is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", by inserting at the end the following new subparagraph:

"(C) any hardship distribution described in section 401(k)(2)(B)(i)(IV)."

(B) Section 403(b)(8)(B) of the 1986 Code is amended by inserting "(including paragraph (4)(C) thereof)" after "section 402(c)".

(C) The amendments made by this paragraph shall apply to distributions after December 31, 1998.

(d) AMENDMENTS RELATED TO SECTION 311 OF 1997 ACT.—

(1) Subsection (h) of section 1 of the 1986 Code (relating to maximum capital gains rate) is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(I) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the net capital gain, or

"(ii) the lesser of—

"(I) the amount of taxable income taxed at a rate below 28 percent, or

"(II) taxable income reduced by the adjusted net capital gain,

"(B) 10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

"(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

"(ii) the taxable income reduced by the adjusted net capital gain,

"(C) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B),

"(D) 25 percent of the excess (if any) of—

"(i) the unrecaptured section 1250 gain (or, if less, the net capital gain), over

"(ii) the excess (if any) of—

"(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

"(II) taxable income, and

"(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

"(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—

"(A) REDUCTION IN 10-PERCENT RATE.—In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

"(B) REDUCTION IN 20-PERCENT RATE.—The rate under paragraph (1)(C) shall be 18 percent

with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of—

“(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph, or

“(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

“(3) NET CAPITAL GAIN TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

“(4) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term ‘adjusted net capital gain’ means net capital gain reduced (but not below zero) by the sum of—

“(A) unrecaptured section 1250 gain, and

“(B) 28-percent rate gain.

“(5) 28-PERCENT RATE GAIN.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘28-percent rate gain’ means the excess (if any) of—

“(i) the sum of—

“(I) the aggregate long-term capital gain from property held for more than 1 year but not more than 18 months,

“(II) collectibles gain, and

“(III) section 1202 gain, over

“(ii) the sum of—

“(I) the aggregate long-term capital loss (not described in subclause (IV)) from property referred to in clause (i)(I),

“(II) collectibles loss,

“(III) the net short-term capital loss, and

“(IV) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

“(B) SPECIAL RULES.—

“(i) SHORT SALE GAINS AND HOLDING PERIODS.—Rules similar to the rules of section 1233(b) shall apply where the substantially identical property has been held more than 1 year but not more than 18 months; except that, for purposes of such rules—

“(I) section 1233(b)(1) shall be applied by substituting ‘18 months’ for ‘1 year’ each place it appears, and

“(II) the holding period of such property shall be treated as being 1 year on the day before the earlier of the date of the closing of the short sale or the date such property is disposed of.

“(ii) LONG-TERM LOSSES.—Section 1233(d) shall be applied separately by substituting ‘18 months’ for ‘1 year’ each place it appears.

“(iii) OPTIONS.—A rule similar to the rule of section 1092(f) shall apply where the stock was held for more than 18 months.

“(iv) SECTION 1256 CONTRACTS.—Amounts treated as long-term capital gain or loss under section 1256(a)(3) shall be treated as attributable to property held for more than 18 months.

“(6) COLLECTIBLES GAIN AND LOSS.—For purposes of this subsection—

“(A) IN GENERAL.—The terms ‘collectibles gain’ and ‘collectibles loss’ mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 18 months but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

“(B) PARTNERSHIPS, ETC.—For purposes of subparagraph (A), any gain from the sale of an

interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

“(7) UNRECAPTURED SECTION 1250 GAIN.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘unrecaptured section 1250 gain’ means the excess (if any) of—

“(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if—

“(I) section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

“(II) only gain from property held for more than 18 months were taken into account, over

“(ii) the excess (if any) of—

“(I) the amount described in paragraph (5)(A)(ii), over

“(II) the amount described in paragraph (5)(A)(i).

“(B) LIMITATION WITH RESPECT TO SECTION 1231 PROPERTY.—The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

“(8) SECTION 1202 GAIN.—For purposes of this subsection, the term ‘section 1202 gain’ means an amount equal to the gain excluded from gross income under section 1202(a).

“(9) QUALIFIED 5-YEAR GAIN.—For purposes of this subsection, the term ‘qualified 5-year gain’ means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

“(10) COORDINATION WITH RECAPTURE OF NET ORDINARY LOSSES UNDER SECTION 1231.—If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

“(11) REGULATIONS.—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

“(12) PASS-THRU ENTITY DEFINED.—For purposes of this subsection, the term ‘pass-thru entity’ means—

“(A) a regulated investment company,

“(B) a real estate investment trust,

“(C) an S corporation,

“(D) a partnership,

“(E) an estate or trust,

“(F) a common trust fund,

“(G) a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247, and

“(H) a qualified electing fund (as defined in section 1295).

“(13) SPECIAL RULES FOR PERIODS DURING 1997.—

“(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

“(i) the amount determined under subclause (I) of paragraph (5)(A)(i) shall include long-term capital gain (not otherwise described in paragraph (5)(A)(i)) which is properly taken into account for the portion of the taxable year before May 7, 1997,

“(ii) the amounts determined under subclause (I) of paragraph (5)(A)(ii) shall include long-term capital loss (not otherwise described in paragraph (5)(A)(ii)) which is properly taken into account for the portion of the taxable year before May 7, 1997, and

“(iii) clauses (i)(I) and (ii)(I) of paragraph (5)(A) shall be applied by not taking into ac-

count any gain and loss on property held for more than 1 year but not more than 18 months which is properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

“(B) OTHER SPECIAL RULES.—

“(i) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN NOT TO INCLUDE PRE-MAY 7, 1997 GAIN.—The amount determined under paragraph (7)(A)(i) shall not include gain properly taken into account for the portion of the taxable year before May 7, 1997.

“(ii) OTHER TRANSITIONAL RULES FOR 18-MONTH HOLDING PERIOD.—Paragraphs (6)(A) and (7)(A)(i)(II) shall be applied by substituting ‘1 year’ for ‘18 months’ with respect to gain properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

“(C) SPECIAL RULES FOR PASS-THRU ENTITIES.—In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.”

(2) Paragraph (3) of section 55(b) of the 1986 Code is amended to read as follows:

“(3) MAXIMUM RATE OF TAX ON NET CAPITAL GAIN OF NONCORPORATE TAXPAYERS.—The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

“(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

“(i) the net capital gain, or

“(ii) the sum of—

“(I) the adjusted net capital gain, plus

“(II) the unrecaptured section 1250 gain, plus

“(B) 10 percent of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(B), plus

“(C) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus

“(D) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C). Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.”

(3) Section 57(a)(7) of the 1986 Code is amended by adding at the end the following new sentence: “In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting ‘28 percent’ for ‘42 percent’.”

(4) Paragraphs (11) and (12) of section 1223, and section 1235(a), of the 1986 Code are each amended by striking “1 year” each place it appears and inserting “18 months”.

(e) AMENDMENTS RELATED TO SECTION 312 OF 1997 ACT.—

(1) Paragraph (2) of section 121(b) of the 1986 Code is amended to read as follows:

“(2) SPECIAL RULES FOR JOINT RETURNS.—In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

“(A) \$500,000 LIMITATION FOR CERTAIN JOINT RETURNS.—Paragraph (1) shall be applied by substituting ‘\$500,000’ for ‘\$250,000’ if—

“(i) either spouse meets the ownership requirements of subsection (a) with respect to such property,

“(ii) both spouses meet the use requirements of subsection (a) with respect to such property, and

“(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

“(B) OTHER JOINT RETURNS.—If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.”.

(2) Section 121(c)(1) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

“(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

“(B)(i) the shorter of—

“(1) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer’s principal residence, or

“(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

“(ii) 2 years.”.

(3) Section 312(d)(2) of the 1997 Act (relating to sales before date of the enactment) is amended by inserting “on or” before “before” each place it appears in the text and heading.

(f) AMENDMENTS RELATED TO SECTION 313 OF 1997 ACT.—

(1) Subsection (a) of section 1045 of such Code is amended—

(A) by striking “an individual” and inserting “a taxpayer other than a corporation”, and

(B) by striking “such individual” and inserting “such taxpayer”.

(2) Subsection (b) of section 1045 of the 1986 Code is amended by adding at the end the following new paragraph:

“(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.”.

SEC. 6006. AMENDMENT RELATED TO TITLE IV OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 401 OF 1997 ACT.—Paragraph (1) of section 55(e) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—

“(A) \$7,500,000 GROSS RECEIPTS TEST.—The tentative minimum tax of a corporation shall be zero for any taxable year if the corporation’s average annual gross receipts for all 3-taxable-year periods ending before such taxable year does not exceed \$7,500,000. For purposes of the preceding sentence, only taxable years beginning after December 31, 1993, shall be taken into account.

“(B) \$5,000,000 GROSS RECEIPTS TEST FOR FIRST 3-YEAR PERIOD.—Subparagraph (A) shall be applied by substituting ‘\$5,000,000’ for ‘\$7,500,000’ for the first 3-taxable-year period (or portion thereof) of the corporation which is taken into account under subparagraph (A).

“(C) FIRST TAXABLE YEAR CORPORATION IN EXISTENCE.—If such taxable year is the first taxable year that such corporation is in existence, the tentative minimum tax of such corporation for such year shall be zero.

“(D) SPECIAL RULES.—For purposes of this paragraph, the rules of paragraphs (2) and (3) of section 448(c) shall apply.”.

(b) AMENDMENT RELATED TO SECTION 402 OF 1997 ACT.—Subsection (c) of section 168 of the 1986 Code is amended—

(1) by striking paragraph (2), and

(2) by striking the portion of such subsection preceding the table in paragraph (1) and inserting the following:

“(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section, the applicable recovery period shall be determined in accordance with the following table.”.

SEC. 6007. AMENDMENTS RELATED TO TITLE V OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 501 OF 1997 ACT.—

(1) Subsection (c) of section 2631 of the 1986 Code is amended to read as follows:

“(c) INFLATION ADJUSTMENT.—

“(1) IN GENERAL.—In the case of any calendar year after 1998, the \$1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

“(A) \$1,000,000, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 1997’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.

“(2) ALLOCATION OF INCREASE.—Any increase under paragraph (1) for any calendar year shall apply only to generation-skipping transfers made during or after such calendar year; except that no such increase for calendar years after the calendar year in which the transferor dies shall apply to transfers by such transferor.”.

(2) Subsection (f) of section 501 of the 1997 Act is amended by inserting “(other than the amendment made by subsection (d))” after “this section”.

(b) AMENDMENTS RELATED TO SECTION 502 OF 1997 ACT.—

(1)(A) Section 2033A of the 1986 Code is hereby moved to the end of part IV of subchapter A of chapter 11 of the 1986 Code and redesignated as section 2057.

(B) So much of such section 2057 (as so redesignated) as precedes subsection (b) thereof is amended to read as follows:

“SEC. 2057. FAMILY-OWNED BUSINESS INTERESTS.

“(a) GENERAL RULE.—

“(1) ALLOWANCE OF DEDUCTION.—For purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent which are described in subsection (b)(2).

“(2) MAXIMUM DEDUCTION.—The deduction allowed by this section shall not exceed \$675,000.

“(3) COORDINATION WITH UNIFIED CREDIT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if this section applies to an estate, the applicable exclusion amount under section 2010 shall be \$625,000.

“(B) INCREASE IN UNIFIED CREDIT IF DEDUCTION IS LESS THAN \$675,000.—If the deduction allowed by this section is less than \$675,000, the amount of the applicable exclusion amount under section 2010 shall be increased (but not above the amount which would apply to the estate without regard to this section) by the excess of \$675,000 over the amount of the deduction allowed.”.

(C) Subparagraph (A) of section 2057(b)(2) of the 1986 Code (as so redesignated) is amended by striking “(without regard to this section)”.

(D) Subsection (c) of section 2057 of the 1986 Code (as so redesignated) is amended by striking “(determined without regard to this section)”.

(E) The table of sections for part III of subchapter A of chapter 11 of the 1986 Code is amended by striking the item relating to section 2033A.

(F) The table of sections for part IV of such subchapter is amended by adding at the end the following new item:

“Sec. 2057. Family-owned business interests.”.

(2) Section 2057(b)(3) of the 1986 Code (as so redesignated) is amended to read as follows:

“(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the sum of—

“(A) the amount of such gifts from the decedent to members of the decedent’s family taken into account under section 2001(b)(1)(B), plus

“(B) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent’s spouse) between the date of the gift and the date of the decedent’s death.”.

(3)(A) Section 2057(e)(2)(C) of the 1986 Code (as so redesignated) is amended by striking “(as defined in section 543(a))” and inserting “(as defined in section 543(a) without regard to paragraph (2)(B) thereof if such trade or business were a corporation)”.

(B) Clause (ii) of section 2057(e)(2)(D) of the 1986 Code (as so redesignated) is amended by striking “income of which is described in section 543(a) or” and inserting “personal holding company income (as defined in subparagraph (C)) or income described”.

(C) Paragraph (2) of section 2057(e) of the 1986 Code (as so redesignated) is amended by adding at the end the following new flush sentence:

“In the case of a lease of property on a net cash basis by the decedent to a member of the decedent’s family, income from such lease shall not be treated as personal holding company income for purposes of subparagraph (C), and such property shall not be treated as an asset described in subparagraph (D)(ii), if such income and property would not be so treated if the lessor had engaged directly in the activities engaged in by the lessee with respect to such property.”.

(4) Paragraph (2) of section 2057(f) of the 1986 Code (as so redesignated) is amended—

(A) by striking “(as determined under rules similar to the rules of section 2032A(c)(2)(B))”, and

(B) by adding at the end the following new subparagraph:

“(C) ADJUSTED TAX DIFFERENCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—The adjusted tax difference attributable to a qualified family-owned business interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under clause (ii)) as the value of such interest bears to the value of all qualified family-owned business interests described in subsection (b)(2).

“(ii) ADJUSTED TAX DIFFERENCE WITH RESPECT TO THE ESTATE.—For purposes of clause (i), the term ‘adjusted tax difference with respect to the estate’ means the excess of what would have been the estate tax liability but for the election under this section over the estate tax liability. For purposes of this clause, the term ‘estate tax liability’ means the tax imposed by section 2001 reduced by the credits allowable against such tax.”.

(5)(A) Paragraph (1) of section 2057(e) of the 1986 Code (as so redesignated) is amended by adding at the end the following new flush sentence:

“For purposes of the preceding sentence, a decedent shall be treated as engaged in a trade or business if any member of the decedent’s family is engaged in such trade or business.”.

(B) Subsection (f) of section 2057 of the 1986 Code (as so redesignated) is amended by adding at the end the following new paragraph:

“(3) USE IN TRADE OR BUSINESS BY FAMILY MEMBERS.—A qualified heir shall not be treated as disposing of an interest described in subsection (e)(1)(A) by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of such individual’s family.”.

(6) Paragraph (1) of section 2057(g) of the 1986 Code (as so redesignated) is amended by striking “or (M)”.

(7) Paragraph (3) of section 2057(i) of the 1986 Code (as so redesignated) is amended by redesignating subparagraphs (L), (M), and (N) as subparagraphs (N), (O), and (P), respectively, and by inserting after subparagraph (K) the following new subparagraphs:

“(L) Section 2032A(g) (relating to application to interests in partnerships, corporations, and trusts).

“(M) Subsections (h) and (i) of section 2032A.”.

(c) AMENDMENTS RELATED TO SECTION 503 OF THE 1997 ACT.—

(1) Clause (iii) of section 6166(b)(7)(A) of the 1986 Code is amended to read as follows:

“(iii) for purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.”.

(2) Clause (iii) of section 6166(b)(8)(A) of the 1986 Code is amended to read as follows:

“(iii) 2-PERCENT INTEREST RATE NOT TO APPLY.—For purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.”.

(d) AMENDMENT RELATED TO SECTION 505 OF THE 1997 ACT.—Paragraphs (1) and (2) of section 7479(a) of the 1986 Code are each amended by striking “an estate,” and inserting “an estate (or with respect to any property included therein).”.

(e) AMENDMENTS RELATED TO SECTION 506 OF THE 1997 ACT.—

(1) Paragraph (1) of section 506(e) of the 1997 Act is amended by striking “and (c)” and inserting “, (c), and (d)”.

(2)(A) Paragraph (9) of section 6501(c) of the 1986 Code is amended by striking the last sentence.

(B) Subsection (f) of section 2001 of the 1986 Code is amended to read as follows:

“(f) VALUATION OF GIFTS.—

“(1) IN GENERAL.—If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

“(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), or

“(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

“(2) FINAL DETERMINATION.—For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

“(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return,

“(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer, or

“(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.”.

(B) Subsection (c) of section 2504 of the 1986 Code is amended to read as follows:

“(c) VALUATION OF GIFTS.—If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

“(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), or

“(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.”.

(f) AMENDMENTS RELATED TO SECTION 507 OF 1997 ACT.—

(1) Paragraph (3) of section 1(g) of the 1986 Code is amended by striking subparagraph (C)

and by redesignating subparagraph (D) as subparagraph (C).

(2) Section 641 of the 1986 Code is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(3) Paragraph (4) of section 1361(e) of the 1986 Code is amended by striking “section 641(d)” and inserting “section 641(c)”.

(4) Subparagraph (A) of section 6103(e)(1) of the 1986 Code is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(g) AMENDMENTS RELATED TO SECTION 508 OF 1997 ACT.—

(1) Subsection (c) of section 2031 of the 1986 Code is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

“(9) TREATMENT OF EASEMENTS GRANTED AFTER DEATH.—In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.”.

(2) The first sentence of paragraph (6) of section 2031(c) of the 1986 Code is amended by striking all that follows “shall be made” and inserting “on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.”.

SEC. 6008. AMENDMENTS RELATED TO TITLE VII OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1400 OF 1986 CODE.—Section 1400(b)(2)(B) of the 1986 Code is amended by inserting “as determined on the basis of the 1990 census” after “percent”.

(b) AMENDMENT RELATED TO SECTION 1400A OF 1986 CODE.—Subsection (a) of section 1400A of the 1986 Code is amended by inserting before the period “and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement”.

(c) AMENDMENTS RELATED TO SECTION 1400B OF 1986 CODE.—

(1) Section 1400B(b) of the 1986 Code is amended by inserting after paragraph (4) the following new paragraph:

“(5) TREATMENT OF DC ZONE TERMINATION.—The termination of the designation of the DC Zone shall be disregarded for purposes of determining whether any property is a DC Zone asset.”.

(2) Paragraph (6) of section 1400B(b) of the 1986 Code is amended by striking “(4)(A)(ii)” and inserting “(4)(A)(i) or (ii)”.

(3) Section 1400B(c) of the 1986 Code is amended by striking “entity which is an”.

(4) Section 1400B(d)(2) of the 1986 Code is amended by inserting “as determined on the basis of the 1990 census” after “percent”.

(d) AMENDMENTS RELATED TO SECTION 1400C OF 1986 CODE.—

(1) Paragraph (1) of section 1400C(b) of the 1986 Code is amended by inserting “and subsection (d)” after “this subsection”.

(2) Paragraph (1) of section 1400C(c) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—The term ‘first-time homebuyer’ means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence in the District of Columbia during the 1-year period ending on the date of the purchase of the principal residence to which this section applies.”.

(3) Subparagraph (B) of section 1400C(e)(2) of the 1986 Code is amended by inserting before the period “on the date the taxpayer first occupies such residence”.

(4) Paragraph (3) of section 1400C(e) of the 1986 Code is amended by striking all that follows “principal residence” and inserting “on the date such residence is purchased.”.

(5) Subsection (i) of section 1400C of the 1986 Code is amended to read as follows:

“(i) APPLICATION OF SECTION.—This section shall apply to property purchased after August 4, 1997, and before January 1, 2001.”.

(6) Subsection (c) of section 23 of the 1986 Code is amended by inserting “and section 1400C” after “other than this section”.

(7) Subparagraph (C) of section 25(e)(1) of the 1986 Code is amended by striking “section 23” and inserting “sections 23 and 1400C”.

SEC. 6009. AMENDMENTS RELATED TO TITLE IX OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 908 OF 1997 ACT.—Paragraph (6) of section 5041(b) of the 1986 Code is amended by inserting “which is a still wine” after “hard cider”.

(b) AMENDMENT RELATED TO SECTION 964 OF 1997 ACT.—

(1) IN GENERAL.—Subparagraph (C) of section 7704(g)(3) of the 1986 Code is amended by striking the period at the end and inserting “and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).”.

(2) EFFECTIVE DATE.—The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act.

(c) AMENDMENT RELATED TO SECTION 971 OF 1997 ACT.—Clause (ii) of section 280F(a)(1)(C) is amended by striking “subparagraph (A)” and inserting “subparagraphs (A) and (B)”.

(d) AMENDMENT RELATED TO SECTION 976 OF 1997 ACT.—Section 6103(d)(5) of the 1986 Code is amended by striking “section 967 of the Taxpayer Relief Act of 1997.” and inserting “section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.”.

(e) AMENDMENT RELATED TO SECTION 977 OF 1997 ACT.—Paragraph (2) of section 977(e) of the 1997 Act is amended to read as follows:

“(2) NON-AMTRAK STATE.—The term ‘non-Amtrak State’ means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act.”.

SEC. 6010. AMENDMENTS RELATED TO TITLE X OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1001 OF 1997 ACT.—

(1) Paragraph (2) of section 1259(b) of the 1986 Code is amended—

(A) by striking “debt” each place it appears in clauses (i), (ii), and (iii) of subparagraph (A) and inserting “position”,

(B) by striking “and” at the end of subparagraph (A), and

(C) by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) any hedge with respect to a position described in subparagraph (A), and”.

(2) Section 1259(d)(1) of the 1986 Code is amended by inserting “(including cash)” after “property”.

(3) Subparagraph (D) of section 475(f)(1) of the 1986 Code is amended by adding at the end the following new sentence: “Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.”.

(4) Subparagraph (C) of section 1001(d)(3) of the 1997 Act is amended by striking “within the 30-day period beginning on” and inserting “before the close of the 30th day after”.

(b) AMENDMENT RELATED TO SECTION 1011 OF 1997 ACT.—Paragraph (1) of section 1059(g) of the 1986 Code is amended by striking “and in the case of stock held by pass-thru entities” and

inserting “, in the case of stock held by pass-thru entities, and in the case of consolidated groups”.

(C) AMENDMENTS RELATED TO SECTION 1012 OF 1997 ACT.—

(1) Paragraph (1) of section 1012(d) of the 1997 Act is amended by striking “1997, pursuant” and inserting “1997; except that the amendment made by subsection (a) shall apply to such distributions only if pursuant”.

(2) Subparagraph (A) of section 355(e)(3) of the 1986 Code is amended—

(A) by striking “shall not be treated as described in” and inserting “shall not be taken into account in applying”, and

(B) by striking clause (iv) and inserting the following new clause:

“(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.”.

(3)(A) Subsection (c) of section 351 of the 1986 Code is amended to read as follows:

“(c) SPECIAL RULES WHERE DISTRIBUTION TO SHAREHOLDERS.—

“(1) IN GENERAL.—In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

“(2) SPECIAL RULE FOR SECTION 355.—If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account in determining control for purposes of this section.”.

(B) Clause (ii) of section 368(a)(2)(H) of the 1986 Code is amended to read as follows:

“(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account.”.

(d) AMENDMENTS RELATED TO SECTION 1013 OF 1997 ACT.—

(1) Paragraph (5) of section 304(b) of the 1986 Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) Subsection (b) of section 304 of the 1986 Code is amended by adding at the end the following new paragraph:

“(6) AVOIDANCE OF MULTIPLE INCLUSIONS, ETC.—In the case of any acquisition to which subsection (a) applies in which the acquiring corporation or the issuing corporation is a foreign corporation, the Secretary shall prescribe such regulations as are appropriate in order to eliminate a multiple inclusion of any item in income by reason of this subpart and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961).”.

(e) AMENDMENTS RELATED TO SECTION 1014 OF 1997 ACT.—

(1) Paragraph (1) of section 351(g) of the 1986 Code is amended by adding “and” at the end of subparagraph (A) and by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

“(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

“(i) subsection (b) shall apply to such transferor, and

“(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).”.

(2) Clause (ii) of section 354(a)(2)(C) of 1986 Code is amended by adding at the end the following new subclause:

“(III) EXTENSION OF STATUTE OF LIMITATIONS.—The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.”.

(f) AMENDMENT RELATED TO SECTION 1024 OF 1997 ACT.—Section 6331(h)(1) of the 1986 Code is amended by striking “The effect of a levy” and inserting “If the Secretary approves a levy under this subsection, the effect of such levy”.

(g) AMENDMENTS RELATED TO SECTION 1031 OF 1997 ACT.—

(1) Subsection (l) of section 4041 of the 1986 Code is amended by striking “subsection (e) or (f)” and inserting “subsection (f) or (g)”.

(2) Subsection (b) of section 9502 of the 1986 Code is amended by moving the sentence added at the end of paragraph (1) to the end of such subsection.

(3) Subsection (c) of section 6421 of the 1986 Code is amended—

(A) by striking “(2)(A)” and inserting “(2)”, and

(B) by adding at the end the following sentence: “Subsection (a) shall not apply to gasoline to which this subsection applies.”.

(h) AMENDMENTS RELATED TO SECTION 1032 OF 1997 ACT.—

(1) Section 1032(a) of the 1997 Act is amended by striking “Subsection (a) of section 4083” and inserting “Paragraph (1) of section 4083(a)”.

(2) Section 1032(e)(12)(A) of the 1997 Act shall be applied as if “gasoline, diesel fuel,” were the material proposed to be stricken.

(3) Paragraph (1) of section 4082(d) of the 1986 Code is amended to read as follows:

“(1) AVIATION-GRADE KEROSENE.—Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft.”.

(4) Paragraph (3) of section 4082(d) of the 1986 Code is amended by striking “a removal, entry, or sale of kerosene to” and inserting “kerosene received by”.

(5) Paragraph (1) of section 4101(e) of the 1986 Code is amended by striking “dyed diesel fuel and kerosene” and inserting “such fuel in a dyed form”.

(i) AMENDMENT RELATED TO SECTION 1034 OF 1997 ACT.—Paragraph (3) of section 4251(d) of the 1986 Code is amended by striking “other similar arrangement” and inserting “any other similar arrangement”.

(j) AMENDMENTS RELATED TO SECTION 1041 OF 1997 ACT.—

(1) Subparagraph (A) of section 512(b)(13) of the 1986 Code is amended by inserting “or accrues” after “receives”.

(2) Subclause (1) of section 512(b)(13)(B)(i) of the 1986 Code is amended by striking “(as defined in section 513A(a)(5)(A))”.

(3) Paragraph (2) of section 1041(b) of the 1997 Act is amended to read as follows:

“(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years.”.

(k) AMENDMENTS RELATED TO SECTION 1053 OF 1997 ACT.—

(1) Section 853 of the 1986 Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) TREATMENT OF TAXES NOT ALLOWED AS A CREDIT UNDER SECTION 901(K).—This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k).”.

(2) Subsection (c) of section 853 of the 1986 Code is amended by striking the last sentence.

(3) Subparagraph (A) of section 901(k)(4) of the 1986 Code is amended by striking “securities business” and inserting “business as a securities dealer”.

(l) AMENDMENT RELATED TO SECTION 1055 OF 1997 ACT.—Section 6611(g)(1) of the 1986 Code is amended by striking “(e), and (h)” and inserting “and (e)”.

(m) AMENDMENT RELATED TO SECTION 1061 OF 1997 ACT.—Subsection (c) of section 751 of the 1986 Code is amended by striking “731” each place it appears and inserting “731, 732”.

(n) AMENDMENT RELATED TO SECTION 1083 OF 1997 ACT.—Section 1083(a)(2) of the 1997 Act is amended—

(1) by striking “21” and inserting “20”, and

(2) by striking “22” and inserting “21”.

(o) AMENDMENTS RELATED TO SECTION 1084 OF 1997 ACT.—

(1) Paragraph (3) of section 264(a) of the 1986 Code is amended by striking “subsection (c)” and inserting “subsection (d)”.

(2) Paragraph (4) of section 264(a) of the 1986 Code is amended by striking “subsection (d)” and inserting “subsection (e)”.

(3)(A) Paragraph (4) of section 264(f) of the 1986 Code is amended by adding at the end the following new subparagraph:

“(E) MASTER CONTRACTS.—If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term ‘master contract’ shall not include any group life insurance contract (as defined in section 848(e)(2)).”.

(B) The second sentence of section 1084(d) of the 1997 Act is amended by striking “but” and all that follows and inserting “except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.”.

(4)(A) Clause (iv) of section 264(f)(5)(A) of the 1986 Code is amended by striking the second sentence.

(B) Subparagraph (B) of section 6724(d)(1) of the 1986 Code is amended by striking “or” at the end of clause (xv), by striking the period at the end of clause (xvi) and inserting “, or”, and by adding at the end the following new clause:

“(xvii) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts).”.

(C) Paragraph (2) of section 6724(d) of the 1986 Code is amended by striking “or” at the end of subparagraph (Y), by striking the period at the end of subparagraph (Z) and inserting “or”, and by adding at the end the following new subparagraph:

“(AA) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts).”.

(5) Subparagraph (A) of section 264(f)(8) of the 1986 Code is amended by striking “subsection (d)(5)(B)” and inserting “subsection (e)(5)(B)”.

(p) AMENDMENTS RELATED TO SECTION 1085 OF 1997 ACT.—

(1) Paragraph (5) of section 32(c) of the 1986 Code is amended—

(A) by inserting before the period at the end of subparagraph (A) “and increased by the amounts described in subparagraph (C)”.

(B) by adding "or" at the end of clause (iii) of subparagraph (B), and

(C) by striking all that follows subclause (II) of subparagraph (B)(iv) and inserting the following:

"(III) other trades or businesses.

For purposes of clause (iv), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee.

"(C) CERTAIN AMOUNTS INCLUDED.—An amount is described in this subparagraph if it is—

"(i) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, or

"(ii) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.

Clause (ii) shall not include any amount which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution."

(2) Clause (v) of section 32(c)(2)(B) of the 1986 Code is amended by inserting "shall be taken into account" before ", but only".

(3) The text of paragraph (3) of section 1085(a) of the 1997 Act is amended to read as follows: "Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting "; and", and by inserting after subparagraph (J) the following new subparagraph:

"(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit)."

(q) AMENDMENT RELATED TO SECTION 1088 OF 1997 ACT.—Section 1088(b)(2)(C) of the 1997 Act is amended by inserting "more than 1 year" before "after".

(r) AMENDMENT RELATED TO SECTION 1089 OF 1997 ACT.—Paragraphs (1)(C) and (2)(C) of section 664(d) of the 1986 Code are each amended by adding "; and" at the end.

SEC. 6011. AMENDMENTS RELATED TO TITLE XI OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1103 OF 1997 ACT.—The paragraph (3) of section 59(a) added by section 1103 of the 1997 Act is redesignated as paragraph (4).

(b) AMENDMENTS RELATED TO SECTION 1121 OF 1997 ACT.—

(1) Subsection (e) of section 1297 of the 1986 Code is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF HOLDERS OF OPTIONS.— Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter."

(2) Section 1298(a)(2)(B) of the 1986 Code is amended by adding at the end the following new sentence: "Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph."

(c) AMENDMENTS RELATED TO SECTION 1122 OF 1997 ACT.—

(1) Section 672(f)(3)(B) of the 1986 Code is amended by striking "section 1296" and inserting "section 1297".

(2) Paragraph (1) of section 1291(d) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section

shall not apply, except that rules similar to the rules of section 1296(j) shall apply."

(3) Subsection (d) of section 1296 of the 1986 Code is amended by adding at the end the following new sentence: "In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years."

(d) AMENDMENT RELATED TO SECTION 1123 OF 1997 ACT.—The subsection (e) of section 1297 of the 1986 Code added by section 1123 of the 1997 Act is redesignated as subsection (f).

(e) AMENDMENTS RELATED TO SECTION 1131 OF 1997 ACT.—

(1) Section 991 of the 1986 Code is amended by striking "except for the tax imposed by chapter 5".

(2) Section 6013 of the 1986 Code is amended by striking "chapters 1 and 5" each place it appears in paragraphs (1)(A) and (5) of subsection (g) and in subsection (h)(1) and inserting "chapter 1".

(f) AMENDMENT RELATED TO SECTION 1142 OF 1997 ACT.—

(1) Paragraph (2) of section 6038(a) of the 1986 Code is amended by striking "by regulations".

(2) Paragraph (3) of section 6038(a) of the 1986 Code is amended by striking "such information" and all that follows through the period and inserting "the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period."

(3) Paragraph (4) of section 6038(e) of the 1986 Code is amended by striking "corporation" and inserting "foreign business entity" each place it appears.

(g) AMENDMENT RELATED TO SECTION 1144 OF 1997 ACT.—Paragraphs (1) and (2) of section 1144(c) of the 1997 Act are each amended by striking "6038B(b)" and inserting "6038B(c) (as redesignated by subsection (b))".

SEC. 6012. AMENDMENTS RELATED TO TITLE XII OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1204 OF 1997 ACT.—The last sentence of section 162(a) of the 1986 Code is amended by striking "investigate" and all that follows and inserting "investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime."

(b) AMENDMENTS RELATED TO SECTION 1205 OF 1997 ACT.—

(1) Section 6311(e)(1) of the 1986 Code is amended by striking "section 6103(k)(8)" and inserting "section 6103(k)(9)".

(2) Paragraph (8) of section 6103(k) of the 1986 Code (as added by section 1205(c)(1) of the 1997 Act) is redesignated as paragraph (9).

(3) The subsection (g) of section 7431 of the 1986 Code added by section 1205 of the 1997 Act is redesignated as subsection (h) and is amended by striking "(8)" in the heading and inserting "(9)".

(4) Section 1205(c)(3) of the 1997 Act shall be applied as if it read as follows:

"(3) Section 6103(p)(3)(A), as amended by section 1026(b)(1)(A) of the 1997 Act, is amended by striking "or (8)" and inserting "(8), or (9)".

(5) Section 1213(b) of the 1997 Act is amended by striking "section 6724(d)(1)(A)" and inserting "section 6724(d)(1)".

(c) AMENDMENT RELATED TO SECTION 1221 OF 1997 ACT.—Paragraph (2) of section 774(d) of the 1986 Code is amended by inserting before the period "or 857(b)(3)(D)".

(d) AMENDMENT RELATED TO SECTION 1223 OF 1997 ACT.—Subsection (c) of section 6724 of the 1986 Code is amended by inserting before the period "(more than 100 information returns in the case of a partnership having more than 100 partners)".

(e) AMENDMENT RELATED TO SECTION 1226 OF 1997 ACT.—Section 1226 of the 1997 Act is

amended by striking "ending on or" and inserting "beginning".

(f) AMENDMENT RELATED TO SECTION 1231 OF 1997 ACT.—Subsection (c) of section 6211 of the 1986 Code is amended—

(1) by striking "SUBCHAPTER C" in the heading and inserting "SUBCHAPTERS C AND D", and

(2) by striking "subchapter C" in the text and inserting "subchapters C and D".

(g) AMENDMENT RELATED TO SECTION 1256 OF 1997 ACT.—Subparagraph (A) of section 857(d)(3) of the 1986 Code is amended by striking "earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)" and inserting "earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply".

(h) AMENDMENT RELATED TO SECTION 1285 OF 1997 ACT.—Section 7430(b) of the 1986 Code is amended by redesignating paragraph (5) as paragraph (4).

SEC. 6013. AMENDMENTS RELATED TO TITLE XIII OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1305 OF 1997 ACT.—

(1) Section 646 of the 1986 Code is redesignated as section 645.

(2) The item relating to section 646 in the table of sections for subpart A of part I of subchapter J of chapter 1 of the 1986 Code is amended by striking "Sec. 646" and inserting "Sec. 645".

(3) Paragraph (1) of section 2652(b) of the 1986 Code is amended by striking "section 646" and inserting "section 645".

(4)(A) Paragraph (1) of section 2652(b) of the 1986 Code is amended by striking the second sentence.

(B) Subsection (b) of section 2654 of the 1986 Code is amended by adding at the end the following new sentence: "For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645."

(b) AMENDMENTS RELATED TO SECTION 1309 OF 1997 ACT.—

(1) Subsection (b) of section 685 of the 1986 Code is amended by adding at the end the following new flush sentence:

"A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death."

(2) Subsection (f) of section 685 of the 1986 Code is amended by inserting before the period at the end "and of trusts terminated during the year".

SEC. 6014. AMENDMENTS RELATED TO TITLE XIV OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1421 OF 1997 ACT.—

(1) Paragraph (1) of section 5054(a) of the 1986 Code is amended—

(A) by inserting ", or imported into the United States and transferred to a brewery free of tax under section 5418," after "produced in the United States" in the text, and

(B) by inserting "; CERTAIN IMPORTED BEER" after "PRODUCED IN THE UNITED STATES" in the heading.

(2) Paragraph (2) of section 5054(a) of the 1986 Code is amended by inserting "and not transferred to a brewery free of tax under section 5418" after "United States".

(3) Section 5056 of the 1986 Code is amended by striking "produced in the United States" each place it appears and inserting "removed for consumption or sale".

(b) AMENDMENTS RELATED TO SECTION 1422 OF 1997 ACT.—

(1) Paragraph (2) of section 5043(a) of the 1986 Code is amended by inserting "which are not transferred to a bonded wine cellar free of tax under section 5364" after "foreign wines".

(2) Subsection (a) of section 5044 of the 1986 Code is amended by striking "produced in the

United States" and inserting "removed from a bonded wine cellar".

(3) Section 5364 of the 1986 Code is amended by striking "Wine imported or brought into" and inserting "Natural wine (as defined in section 5381) imported or brought into".

(c) AMENDMENT RELATED TO SECTION 1434 OF 1997 ACT.—Paragraph (2) of section 4052(f) of the 1986 Code is amended by striking "this section" and inserting "such section".

(d) AMENDMENT RELATED TO SECTION 1436 OF 1997 ACT.—Paragraph (2) of section 4091(a) of the 1986 Code is amended by inserting "or on which tax has been credited or refunded" after "such paragraph".

(e) AMENDMENT RELATED TO SECTION 1453 OF 1997 ACT.—Subparagraph (D) of section 7430(c)(4) of the 1986 Code is amended by striking "subparagraph (A)(iii)" and inserting "subparagraph (A)(ii)".

SEC. 6015. AMENDMENTS RELATED TO TITLE XV OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1501 OF 1997 ACT.—The paragraph (8) of section 408(p) of the 1986 Code added by section 1501(b) of the 1997 Act is redesignated as paragraph (9).

(b) AMENDMENT RELATED TO SECTION 1505 OF 1997 ACT.—Section 1505(d)(2) of the 1997 Act is amended by striking "(b)(12)" and inserting "(b)(12)(A)(i)".

(c) AMENDMENTS RELATED TO SECTION 1529 OF 1997 ACT.—

(1) Section 1529(a) of the 1997 Act is amended to read as follows:

"(a) GENERAL RULE.—Amounts to which this section applies which are received by an individual (or the survivors of the individual) as a result of hypertension or heart disease of the individual shall be excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1986."

(2) Section 1529(b)(1)(B) of the 1997 Act is amended to read as follows:

"(B) under—
 "(i) a State law (as amended on May 19, 1992) which irrefutably presumed that heart disease and hypertension are work-related illnesses but only for employees hired before July 1, 1992, or
 "(ii) any other statute, ordinance, labor agreement, or similar provision as a disability pension payment or in the nature of a disability pension payment attributable to employment as a police officer or fireman, but only if the individual is referred to in the State law described in clause (i); and".

(d) AMENDMENT RELATED TO SECTION 1530 OF 1997 ACT.—Subparagraph (C) of section 404(a)(9) of the 1986 Code (as added by section 1530 of the 1997 Act) is redesignated as subparagraph (D) and is amended by striking "A qualified" and inserting "QUALIFIED GRATUITOUS TRANSFERS.—A qualified".

(e) AMENDMENT RELATED TO SECTION 1531 OF 1997 ACT.—Subsection (f) of section 9811 of the 1986 Code (as added by section 1531 of the 1997 Act) is redesignated as subsection (e).

SEC. 6016. AMENDMENTS RELATED TO TITLE XVI OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1601(D) OF 1997 ACT.—

(1) AMENDMENTS RELATED TO SECTION 1601(D)(1)—

(A) Section 408(p)(2)(D)(i) of the 1986 Code is amended by striking "or (B)" in the last sentence.

(B) Section 408(p) of the 1986 Code is amended by adding at the end the following new paragraph:

"(10) SPECIAL RULES FOR ACQUISITIONS, DISPOSITIONS, AND SIMILAR TRANSACTIONS.—

"(A) IN GENERAL.—An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

"(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II), and

"(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

"(B) APPLICABLE REQUIREMENT.—For purposes of this paragraph, the term 'applicable requirement' means—

"(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer,

"(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer, and

"(iii) the participation requirements under paragraph (4).

"(C) TRANSITION PERIOD.—For purposes of this paragraph, the term 'transition period' means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs."

(C) Section 408(p)(2) of the 1986 Code is amended—

(i) by striking "the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)" in the last sentence of subparagraph (C)(i)(II) and inserting "the preceding sentence shall not apply", and

(ii) by striking clause (iii) of subparagraph (D).

(2) AMENDMENT TO SECTION 1601(D)(4).—Section 1601(d)(4)(A) of the 1997 Act is amended—

(A) by striking "Section 403(b)(11)" and inserting "Paragraphs (7)(A)(ii) and (11) of section 403(b)", and

(B) by striking "403(b)(1)" in clause (ii) and inserting "403(b)(10)".

(b) AMENDMENT RELATED TO SECTION 1601(F)(4) OF 1997 ACT.—Subsection (d) of section 6427 of the 1986 Code is amended—

(1) by striking "HELICOPTERS" in the heading and inserting "OTHER AIRCRAFT USES", and

(2) by inserting "or a fixed-wing aircraft" after "helicopter".

SEC. 6017. AMENDMENT RELATED TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.

(a) IN GENERAL.—Subparagraph (B) of section 6427(i)(2) of the 1986 Code is amended to read as follows:

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the 1st quarter following the last quarter included in the claim."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 9009 of the Transportation Equity Act for the 21st Century.

SEC. 6018. AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996.

(a) AMENDMENT RELATED TO SECTION 1116.—Subparagraph (C) of section 1116(b)(2) of the Small Business Job Protection Act of 1996 is amended by striking "chapter 68" and inserting "chapter 61".

(b) AMENDMENT RELATED TO SECTION 1421.—Section 408(d)(7) of the 1986 Code is amended—

(1) by inserting "or 402(k)" after "section 402(h)" in subparagraph (B) thereof, and

(2) by inserting "OR SIMPLE RETIREMENT ACCOUNTS" after "PENSIONS" in the heading thereof.

(c) AMENDMENT RELATED TO SECTION 1431.—Subparagraph (E) of section 1431(c)(1) of the Small Business Job Protection Act of 1996 is amended to read as follows:

"(E) Section 414(q)(5), as redesignated by subparagraph (A), is amended by striking 'under paragraph (4) or the number of officers taken into account under paragraph (5)'"

(d) AMENDMENT RELATED TO SECTION 1604.—Paragraph (3) of section 1604(b) of such Act is amended—

(1) by striking "such Code" and inserting "the Internal Revenue Code of 1986", and

(2) by striking "such date of enactment" and inserting "the date of the enactment of this Act".

(e) AMENDMENT RELATED TO SECTION 1609.—Paragraph (1) of section 1609(h) of such Act is amended by striking "paragraph (3)(A)(i)" and inserting "paragraph (3)(A)".

(f) AMENDMENTS RELATED TO SECTION 1807.—

(1) Subparagraph (A) of section 23(b)(2) of the 1986 Code (relating to income limitation on credit for adoption expenses) is amended by inserting "(determined without regard to subsection (c))" after "for any taxable year".

(2) Paragraph (3) of section 1807(c) of the Small Business Job Protection Act of 1996 is amended by striking "Clause (i)" and inserting "Clause (ii)".

(g) AMENDMENT RELATED TO SECTION 1903.—Subsection (b) of section 1903 of such Act shall be applied as if "or" in the material proposed to be stricken were capitalized.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 to which they relate.

SEC. 6019. AMENDMENTS RELATED TO TAXPAYER BILL OF RIGHTS 2.

(a) IN GENERAL.—Subsection (b) of section 6104 of the 1986 Code is amended by adding at the end the following new sentence: "In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization."

(b) PUBLIC INSPECTION.—Subparagraph (C) of section 6104(e)(1) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of an organization described in section 501(d), subparagraph (A) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization."

(c) DISCLOSURE TO AUTHORIZED REPRESENTATIVES OF THE TAXPAYER.—Paragraph (6) of section 6103(e) of the 1986 Code is amended by striking "or (5)" and inserting "(5), (8), or (9)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6020. AMENDMENT RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1993.

(a) IN GENERAL.—Section 196(c) of the 1986 Code is amended by striking "and" at the end of paragraph (6), by striking the period at the end of paragraph (7), and insert ", and", and by adding at the end the following new paragraph:

"(8) the employer social security credit determined under section 45B(a)."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993.

SEC. 6021. AMENDMENT RELATED TO REVENUE RECONCILIATION ACT OF 1990.

(a) IDENTIFICATION REQUIREMENT FOR INDIVIDUALS ELIGIBLE FOR EARNED INCOME CREDIT.—Subparagraph (F) of section 32(c)(1) of the 1986 Code is amended by striking "The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—" and inserting "No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—".

(b) IDENTIFICATION REQUIREMENT FOR QUALIFYING CHILDREN UNDER EARNED INCOME CREDIT.—

(1) IN GENERAL.—Clause (i) of section 32(c)(3)(D) of the 1986 Code is amended to read as follows:

"(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year."

(2) INDIVIDUALS WHO DO NOT INCLUDE TIN, ETC., OF ANY QUALIFYING CHILD.—Paragraph (1)

of section 32(c) of the 1986 Code is amended by adding at the end the following new subparagraph:

“(G) INDIVIDUALS WHO DO NOT INCLUDE TIN, ETC., OF ANY QUALIFYING CHILD.—No credit shall be allowed under this section to any eligible individual who has 1 or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).”.

(3) CONFORMING AMENDMENT.—Subparagraph (A) of section 32(c)(3) is amended by inserting “and” at the end of clause (ii), by striking “, and” at the end of clause (iii) and inserting a period and by striking clause (iv).

(c) EFFECTIVE DATES.—

(1) ELIGIBLE INDIVIDUALS.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) QUALIFYING CHILDREN.—The amendments made by subsection (b) shall take effect as if included in the amendments made by section 1111 of Revenue Reconciliation Act of 1990.

SEC. 6022. AMENDMENT RELATED TO TAX REFORM ACT OF 1986.

(a) IN GENERAL.—Section 6401(b)(1) of the 1986 Code is amended by striking “and D” and inserting “D, and G”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 701(b) of the Tax Reform Act of 1986.

SEC. 6023. MISCELLANEOUS CLERICAL AND DEADWOOD CHANGES.

(1) The heading for subparagraph (B) of section 45A(b)(1) of the 1986 Code is amended by striking “TARGETED JOBS CREDIT” and inserting “WORK OPPORTUNITY CREDIT”.

(2) The subsection heading for section 59(b) of the 1986 Code is amended by striking “SECTION 936 CREDIT” and inserting “CREDITS UNDER SECTION 30A OR 936”.

(3) Subsection (n) of section 72 of the 1986 Code is amended by inserting “(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)” after “section 101(b)(2)(D)”.

(4) Subparagraph (A) of section 72(t)(3) of the 1986 Code is amended by striking “(A)(v),” and inserting “(A)(v)”.

(5) Clause (ii) of section 142(f)(3)(A) of the 1986 Code is amended by striking “1997, (” and inserting “1997 (”.

(6) The last sentence of paragraph (3) of section 501(n) of the 1986 Code is amended by striking “subparagraph (C)(ii)” and inserting “subparagraph (E)(ii)”.

(7) Subsection (o) of section 501 of the 1986 Code is amended by striking “section 1853(e)” and inserting “section 1855(d)”.

(8) The heading for subclause (II) of section 512(b)(17)(B)(ii) of the 1986 Code is amended by striking “RULE” and inserting “RULE”.

(9) Clause (ii) of section 543(d)(5)(A) of the 1986 Code is amended by striking “section 563(c)” and inserting “section 563(d)”.

(10) Subparagraph (B) of section 871(f)(2) of the 1986 Code is amended by striking “(19 U.S.C. 2462)” and inserting “19 U.S.C. 2461 et seq.”.

(11) Paragraph (2) of section 1017(a) of the 1986 Code is amended by striking “(b)(2)(D)” and inserting “(b)(2)(E)”.

(12) Subparagraph (D) of section 1250(d)(4) of the 1986 Code is amended by striking “the last sentence of section 1033(b)” and inserting “section 1033(b)(2)”.

(13) Paragraph (5) of section 3121(a) of the 1986 Code is amended—

(A) by striking the semicolon at the end of subparagraph (F) and inserting a comma,

(B) by striking “or” at the end of subparagraph (G), and

(C) by striking the period at the end of subparagraph (I) and inserting a semicolon.

(14) Paragraph (19) of section 3401(a) of the 1986 Code is amended by inserting “for” before “any benefit provided to”.

(15) Paragraph (21) of section 3401(a) of the 1986 Code is amended by inserting “for” before “any payment made”.

(16) Sections 4092(b) and 6427(q)(2) of the 1986 Code are each amended by striking “section 4041(c)(4)” and inserting “section 4041(c)(2)”.

(17) Sections 4221(c) and 4222(d) of the 1986 Code are each amended by striking “4053(a)(6)” and inserting “4053(6)”.

(18)(A) The heading of section 4973 of the 1986 Code is amended to read as follows:

“SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO CERTAIN TAX-FAVORED ACCOUNTS AND ANNUITIES.”.

(B) The item relating to section 4973 in the table of sections for chapter 43 of the 1986 Code is amended to read as follows:

“Sec. 4973. Tax on excess contributions to certain tax-favored accounts and annuities.”.

(19) Section 4975 of the 1986 Code is amended—

(A) in subsection (c)(3) by striking “exempt for the tax” and inserting “exempt from the tax”, and

(B) in subsection (i) by striking “Secretary of Treasury” and inserting “Secretary of the Treasury”.

(20) Paragraph (1) of section 6039(a) of the 1986 Code is amended by inserting “to any person” after “transfers”.

(21) Subparagraph (A) of section 6050R(b)(2) of the 1986 Code is amended by striking the semicolon at the end thereof and inserting a comma.

(22) Subparagraph (A) of section 6103(h)(4) of the 1986 Code is amended by inserting “if” before “the taxpayer is a party to”.

(23) Paragraph (5) of section 6416(b) of the 1986 Code is amended by striking “section 4216(e)(1)” each place it appears and inserting “section 4216(d)(1)”.

(24)(A) Section 6421 of the 1986 Code is amended by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(B) Subsection (b) of section 34 of the 1986 Code is amended by striking “section 6421(j)” and inserting “section 6421(i)”.

(C) Subsections (a) and (b) of section 6421 of the 1986 Code are each amended by striking “subsection (j)” and inserting “subsection (i)”.

(25) Paragraph (3) of section 6427(f) of the 1986 Code is amended by striking “, (e),”.

(26)(A) Section 6427 of the 1986 Code, as amended by paragraph (16), is amended by redesignating subsections (n), (p), (q), and (r) as subsections (m), (n), (o), and (p), respectively.

(B) Paragraphs (1) and (2)(A) of section 6427(i) of the 1986 Code are each amended by striking “(q)” and inserting “(o)”.

(27) Subsection (m) of section 6501 of the 1986 Code is amended by striking “election under” and all that follows through “(or any)” and inserting “election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any)”.

(28) The paragraph heading of paragraph (2) of section 7702B(e) of the 1986 Code is amended by inserting “SECTION” after “APPLICATION OF”.

(29) Paragraph (3) of section 7434(b) of the 1986 Code is amended by striking “attorneys fees” and inserting “attorneys’ fees”.

(30) Subparagraph (B) of section 7872(f)(2) of the 1986 Code is amended by striking “foregone” and inserting “forgone”.

(31) Subsection (e) of section 9502 of the 1986 Code is amended to read as follows:

“(e) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this subsection) be required to be appropriated under subparagraphs (A), (C), and (D) of subsection (b)(1) shall be reduced by—

“(1) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

“(2) 0.67 cent per gallon in the case of fuel used in producing a mixture described in paragraph (1).”.

(32) The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6024. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 to which they relate.

TITLE VII—REVENUE PROVISIONS

SEC. 7001. CLARIFICATION OF DEDUCTION FOR DEFERRED COMPENSATION.

(a) IN GENERAL.—Section 404(a) (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 by adding at the end the following new paragraph:

“(1) DETERMINATIONS RELATING TO DEFERRED COMPENSATION.—For purposes of determining under this section—

“(A) whether compensation of an employee is deferred compensation, and

“(B) when deferred compensation is paid, no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.

SEC. 7002. TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES.

(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984 (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were 1 entity.

(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

(1) IN GENERAL.—The term “nonqualified real property interest” means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

(A) the acquisition is pursuant to a written agreement (including a put option, buy-sell agreement, and an agreement relating to a third party default) which was binding on such date and at all times thereafter on such REIT or stapled entity, or

(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) IMPROVEMENTS AND LEASES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term “nonqualified real property interest” shall not include—

(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group, and

(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

(B) LEASES.—The term “nonqualified real property interest” shall not include—

(i) any lease of a qualified real property interest if such lease is not otherwise such an interest, or

(ii) any renewal of a lease which is a qualified real property interest,

but only if the rent on any lease referred to in clause (i) or any renewal referred to in clause (ii) does not exceed an arm's length rate.

(C) TERMINATION WHERE CHANGE IN USE.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

(I) the cost of such property, or

(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

(4) EXCEPTION FOR PERMITTED TRANSFERS, ETC.—The term “nonqualified real property interest” shall not include any interest in real property acquired solely as a result of a direct or indirect contribution, distribution, or other transfer of such interest from the exempt REIT or any member of the stapled REIT group to such REIT or any such member, but only to the extent the aggregate of the interests of the exempt REIT and all stapled entities in such interest in real property (determined in accordance with subsection (c)(1)) is not increased by reason of the transfer.

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter, and

(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

(6) QUALIFIED REAL PROPERTY INTEREST.—The term “qualified real property interest” means any interest in real property other than a nonqualified real property interest.

(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this section—

(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held or acquired directly by the exempt REIT or the stapled entity.

(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4),

(B) interests in the entity which are acquired by an exempt REIT or a member of the stapled REIT group in any acquisition described in an agreement, announcement, or filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998, and

(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(5) TREATMENT OF 60-PERCENT PARTNERSHIPS.—

(A) IN GENERAL.—If, as of March 26, 1998—

(i) an exempt REIT or stapled entity held directly or indirectly at least 60 percent of the capital or profits interest in a partnership, and

(ii) 90 percent or more of the capital interests and 90 percent or more of the profits interests in such partnership (other than interests held directly or indirectly by the exempt REIT or stapled entity) are, or will be, redeemable or exchangeable for consideration the amount of which is determined by reference to the value of shares of stock in the exempt REIT or stapled entity (or both),

paragraph (3) shall not apply to such partnership, and such REIT or entity shall be treated for all purposes of this section as holding all of the capital and profits interests in such partnership.

(B) LIMITATION TO 1 PARTNERSHIP.—If, as of January 1, 1999, more than 1 partnership owned by any exempt REIT or stapled entity meets the requirements of subparagraph (A), only the largest such partnership on such date (determined by aggregate asset bases) shall be treated as meeting such requirements.

(C) MIRROR ENTITY.—For purposes of subparagraph (A), an interest in a partnership formed after March 26, 1998, shall be treated as held by an exempt REIT or stapled entity on March 26, 1998, if such partnership is formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998.

(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2), and

(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property.

If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term “nonqualified obligation” means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

(A) payments under which would be treated as interest if received by a REIT, and

(B) the rate of interest on which does not exceed an arm's length rate.

(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

(A) which is secured on March 26, 1998, by an interest in real property, and

(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest, and the interest payable on such obligation is not changed to a rate which exceeds an arm's length rate unless such change is pursuant to the terms of the obligation in effect on March 26, 1998. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing) and the interest payable on such refinanced obligation does not exceed an arm's length rate.

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(5) shall apply for purposes of this subsection.

(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection.

(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

(e) DEFINITIONS.—For purposes of this section—

(1) REIT GROSS INCOME PROVISIONS.—The term “REIT gross income provisions” means—

(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986, and

(B) section 857(b)(5) of such Code.

(2) EXEMPT REIT.—The term “exempt REIT” means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

(3) STAPLED REIT GROUP.—The term “stapled REIT group” means, with respect to an exempt REIT, the group consisting of—

(A) all entities which are stapled entities with respect to the exempt REIT, and

(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

(4) 10-PERCENT SUBSIDIARY ENTITY.—

(A) IN GENERAL.—The term “10-percent subsidiary entity” means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which

would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

(C) 10-PERCENT INTEREST.—The term “10-percent interest” means—

(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation,

(ii) in the case of an interest in a partnership, ownership of 10 percent of the capital or profits interest in the partnership, and

(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998.

SEC. 7003. CERTAIN CUSTOMER RECEIVABLES INELIGIBLE FOR MARK-TO-MARKET TREATMENT.

(a) CERTAIN RECEIVABLES NOT ELIGIBLE FOR MARK TO MARKET.—Section 475(c) (relating to definitions) is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULES FOR CERTAIN RECEIVABLES.—

“(A) IN GENERAL.—Paragraph (2)(C) shall not include any nonfinancial customer paper.

“(B) NONFINANCIAL CUSTOMER PAPER.—For purposes of subparagraph (A), the term ‘nonfinancial customer paper’ means any receivable which—

“(i) is a note, bond, debenture, or other evidence of indebtedness,

“(ii) arises out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services, and

“(iii) is held by such person (or a person who bears a relationship to such person described in section 267(b) or 707(b)) at all times since issue.”

(b) REGULATIONS.—Section 475(g) is amended by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end the following new paragraph:

“(3) to prevent the use by taxpayers of subsection (c)(4) to avoid the application of this section to a receivable that is inventory in the hands of the taxpayer (or a person who bears a relationship to the taxpayer described in sections 267(b) of 707(b)).”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.

SEC. 7004. MODIFICATION OF AGI LIMIT FOR CONTRIBUTIONS TO ROTH IRAS.

(a) IN GENERAL.—Section 408A(c)(3)(C)(i) (relating to limits based on modified adjusted gross income) is amended to read as follows:

“(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that—

“(I) any amount included in gross income under subsection (d)(3) shall not be taken into account, and

“(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

TITLE VIII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

SEC. 8001. IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO.

Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall only apply to—

(1) section 3105 (relating to administrative appeal of adverse IRS determination of tax-exempt status of bond issue), and

(2) section 3445(c) (relating to State fish and wildlife permits).

TITLE IX—TECHNICAL CORRECTIONS TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

SEC. 9001. SHORT TITLE.

This title may be cited as the “TEA 21 Restoration Act”.

SEC. 9002. AUTHORIZATION AND PROGRAM SUBTITLE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1101(a) of the Transportation Equity Act for the 21st Century is amended—

(1) in paragraph (13)—

(A) by striking “\$1,025,695,000” and inserting “\$1,029,583,500”;

(B) by striking “\$1,398,675,000” and inserting “\$1,403,977,500”;

(C) by striking “\$1,678,410,000” the first place it appears and inserting “\$1,684,773,000”;

(D) by striking “\$1,678,410,000” the second place it appears and inserting “\$1,684,773,000”;

(E) by striking “\$1,771,655,000” the first place it appears and inserting “\$1,778,371,500”;

(F) by striking “\$1,771,655,000” the second place it appears and inserting “\$1,778,371,500”;

(2) in paragraph (14)—

(A) by striking “1998” and inserting “1999”;

(B) by inserting before “\$5,000,000” the following: “\$10,000,000 for fiscal year 1998”.

(b) OBLIGATION LIMITATIONS.—

(1) GENERAL LIMITATION.—Section 1102(a) of such Act is amended—

(A) in paragraph (2) by striking “\$25,431,000,000” and inserting “\$25,511,000,000”;

(B) in paragraph (3) by striking “\$26,155,000,000” and inserting “\$26,245,000,000”;

(C) in paragraph (4) by striking “\$26,651,000,000” and inserting “\$26,761,000,000”;

(D) in paragraph (5) by striking “\$27,235,000,000” and inserting “\$27,355,000,000”; and

(E) in paragraph (6) by striking “\$27,681,000,000” and inserting “\$27,811,000,000”.

(2) TRANSPORTATION RESEARCH PROGRAMS.—Section 1102(e) of such Act is amended—

(A) by striking “3” and inserting “5”;

(B) by striking “VI” and inserting “V”;

(C) by inserting before the period at the end the following: “; except that obligation authority made available for such programs under such limitations shall remain available for a period of 3 fiscal years”.

(3) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Section 1102(f) of such Act is amended by striking “(other than the program under section 160 of title 23, United States Code)”.

(c) APPORTIONMENTS.—Section 1103 of such Act is amended—

(1) in subsection (1) by adding at the end the following:

“(5) Section 150 of such title, and the item relating to such section in the analysis for chapter 1 of such title, are repealed.”;

(2) in subsection (n) by inserting “of title 23, United States Code” after “206”;

(3) by adding at the end the following:

“(o) TECHNICAL ADJUSTMENTS.—Section 104 of title 23, United States Code, is amended—

“(1) in subsection (a)(1) (as amended by subsection (a) of this section) by striking ‘under section 103’;

“(2) in subsection (b) (as amended by subsection (b) of this section)—

“(A) in paragraph (1)(A) by striking ‘1999 through 2003’ and inserting ‘1998 through 2002’; and

“(B) in paragraph (4)(B)(i) by striking ‘on lanes on Interstate System’ and all that follows through ‘in each State’ and inserting ‘on Interstate System routes open to traffic in each State’; and

“(3) in subsection (e)(2) (as added by subsection (d)(6) of this section) by striking ‘104, 144, or 157’ and inserting ‘104, 105, or 144’.”;

(d) MINIMUM GUARANTEE.—Section 1104 of such Act is amended by adding at the end the following:

“(c) TECHNICAL ADJUSTMENTS.—Section 105 of title 23, United States Code (as amended by subsection (a) of this section), is amended—

“(1) in subsection (a) by adding at the end the following: ‘The minimum amount allocated to a State under this section for a fiscal year shall be \$1,000,000.’;

“(2) in subsection (c)(1) by striking ‘50 percent of’;

“(3) in subsection (c)(1)(A) by inserting ‘(other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs)’ after ‘subsection (a)’;

“(4) in subsection (c)(1)(B) by striking ‘all States’ and inserting ‘each State’;

“(5) in subsection (c)(2)—

“(A) by striking ‘apportion’ and inserting ‘administer’; and

“(B) by striking ‘apportioned’ and inserting ‘administered’; and

“(6) in subsection (f)—

“(A) by inserting ‘percentage’ before ‘return’ each place it appears;

“(B) in paragraph (2) by striking ‘for the preceding fiscal year was equal to or less than’ and inserting ‘in the table in subsection (b) was equal to’; and

“(C) in paragraph (3)—

“(i) by inserting ‘proportionately’ before ‘adjust’;

“(ii) by striking ‘set forth’; and

“(iii) by striking ‘do not exceed’ and inserting ‘is equal to’.”;

(e) REVENUE ALIGNED BUDGET AUTHORITY.—Section 1105 of such Act is amended by adding at the end the following:

“(c) TECHNICAL CORRECTIONS.—Section 110 of such title (as amended by subsection (a)) is amended—

“(1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—

“(1) ALLOCATION.—On October 15 of fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate for such fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc)) if the amount determined pursuant to such section for such fiscal year is greater than zero.

“(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc)) for fiscal year 2000 or any fiscal year thereafter is less than zero, the Secretary on October 1 of

the succeeding fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) by an aggregate amount equal to the amount determined pursuant to such section."

"(2) in subsections (b)(2) and (b)(4) by striking 'subsection (a)' and inserting 'subsection (a)(1)'; and

"(3) in subsection (c) by striking 'Maintenance program, the' and inserting 'and'."

(f) INTERSTATE MAINTENANCE PROGRAM.—Section 1107 of such Act is amended by adding at the end the following:

"(d) TECHNICAL AMENDMENTS.—Section 119 of such title (as amended by subsection (a)) is amended—

"(1) in subsection (b)—

"(A) by striking '104(b)(5)(B)' and inserting '104(b)(4)'; and

"(B) by striking '104(b)(5)(A)' each place it appears and inserting '104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century)'; and

"(2) in subsection (c) by striking '104(b)(5)(B)' each place it appears and inserting '104(b)(4)';."

(g) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—Section 1110(d)(2) of such Act is amended—

(1) by striking "149(c)" and inserting "149(e)"; and

(2) by striking "that reduce" and inserting "reduce".

(h) HIGHWAY USE TAX EVASION PROJECTS.—Section 1114 of such Act is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 143 of title 23, United States Code (as amended by subsection (a) of this section), is amended—

"(1) in subsection (c)(1) by striking 'April 1' and inserting 'August 1';

"(2) in subsection (c)(3) by inserting 'PRIORITY' after 'FUNDING'; and

"(3) in subsection (c)(3) by inserting 'and prior to funding any other activity under this section,' after '2003.'."

(i) FEDERAL LANDS HIGHWAYS PROGRAM.—Section 1115 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(f) CONFORMING AMENDMENTS.—

"(1) FEDERAL SHARE.—Subsections (j) and (k) of section 120 of title 23, United States Code (as added by subsection (a) of this section), are redesignated as subsections (k) and (l), respectively.

"(2) RESERVATION OF FUNDS.—Section 202(d)(4)(B) of such title (as added by subsection (b)(4) of this section) is amended by striking 'to, apply sodium acetate/formate de-icer to,' and inserting ', sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions'.

"(3) ELIMINATION OF DUPLICATIVE PROVISION.—Section 144(g) of such title is amended by striking paragraph (4)."

(j) WOODROW WILSON MEMORIAL BRIDGE CORRECTION.—Section 1116 of such Act is amended by adding at the end the following:

"(e) TECHNICAL CORRECTION.—Sections 404(5) and 407(c)(2)(C)(iii) of such Act (as amended by subsections (a)(2) and (b)(2), respectively) are amended by striking 'the record of decision' each place it appears and inserting 'a record of decision'."

(k) TECHNICAL CORRECTION.—Section 1117 of such Act is amended in subsections (a) and (b) by striking "section 102" each place it appears and inserting "section 1101(a)(6)".

SEC. 9003. RESTORATIONS TO GENERAL PROVISIONS SUBTITLE.

(a) IN GENERAL.—Subtitle B of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"SEC. 1224. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.

"(a) HISTORIC COVERED BRIDGE DEFINED.—In this section, the term 'historic covered bridge' means a covered bridge that is listed or eligible for listing on the National Register of Historic Places.

"(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations under subsection (d), the Secretary shall—

"(1) collect and disseminate information concerning historic covered bridges;

"(2) foster educational programs relating to the history and construction techniques of historic covered bridges;

"(3) conduct research on the history of historic covered bridges; and

"(4) conduct research, and study techniques, on protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

"(c) DIRECT FEDERAL ASSISTANCE.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

"(2) TYPES OF PROJECT.—A grant under paragraph (1) may be made for a project—

"(A) to rehabilitate or repair a historic covered bridge; and

"(B) to preserve a historic covered bridge, including through—

"(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

"(ii) installation of a system to prevent vandalism and arson; or

"(iii) relocation of a bridge to a preservation site.

"(3) AUTHENTICITY.—A grant under paragraph (1) may be made for a project only if—

"(A) to the maximum extent practicable, the project—

"(i) is carried out in the most historically appropriate manner; and

"(ii) preserves the existing structure of the historic covered bridge; and

"(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

"(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with a grant under this subsection shall be 80 percent.

"(d) FUNDING.—There is authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 1999 through 2003. Such funds shall remain available until expended.

"SEC. 1225. SUBSTITUTE PROJECT.

"(a) APPROVAL OF PROJECT.—Notwithstanding any other provision of law, upon the request of the Mayor of the District of Columbia, the Secretary may approve substitute highway and transit projects under section 103(e)(4) of title 23, United States Code (as in effect on the day before the date of enactment of this Act), in lieu of construction of the Barney Circle Freeway project in the District of Columbia, as identified in the 1991 Interstate Cost Estimate.

"(b) ELIGIBILITY FOR FEDERAL ASSISTANCE.—Upon approval of any substitute project or projects under subsection (a)—

"(1) the cost of construction of the Barney Circle Freeway Modification project shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956; and

"(2) substitute projects approved pursuant to this section shall be funded from interstate construction funds apportioned or allocated to the District of Columbia that are not expended and not subject to lapse on the date of enactment of this Act.

"(c) FEDERAL SHARE.—The Federal share payable on account of a project or activity approved under this section shall be 85 percent of the cost

thereof; except that the exception set forth in section 120(b)(2) of title 23, United States Code, shall apply.

"(d) LIMITATION ON ELIGIBILITY.—Any substitute project approved pursuant to subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction, or construction must have commenced, before the last day of the 4-year period beginning on the date of enactment of this Act. If the substitute project is not under contract for construction, or construction has not commenced, by such last day, the Secretary shall withdraw approval of the substitute project.

"SEC. 1226. FISCAL, ADMINISTRATIVE, AND OTHER AMENDMENTS.

"(a) ADVANCED CONSTRUCTION.—Section 115 of title 23, United States Code, is amended—

"(1) in subsection (b)—

"(A) by moving the text of paragraph (1) (including subparagraphs (A) and (B)) 2 ems to the left;

"(B) by striking 'PROJECTS' and all that follows through 'When a State' and inserting 'PROJECTS.—When a State';

"(C) by striking paragraphs (2) and (3);

"(D) by striking '(A) prior' and inserting '(1) prior'; and

"(E) by striking '(B) the project' and inserting '(2) the project';

"(2) by striking subsection (c); and

"(3) by redesignating subsection (d) as subsection (c).

"(b) AVAILABILITY OF FUNDS.—Section 118 of such title is amended—

"(1) in the subsection heading of subsection (b) by striking '; DISCRETIONARY PROJECTS'; and

"(2) by striking subsection (e) and inserting the following:

"(e) EFFECT OF RELEASE OF FUNDS.—Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.'"

"(c) ADVANCES TO STATES.—Section 124 of such title is amended—

"(1) by striking '(a)' the first place it appears; and

"(2) by striking subsection (b).

"(d) DIVERSION.—Section 126 of such title, and the item relating to such section in the analysis for chapter 1 of such title, are repealed.'"

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of such Act is amended by inserting after the item relating to section 1222 the following:

"Sec. 1223. Transportation assistance for Olympic cities.

"Sec. 1224. National historic covered bridge preservation.

"Sec. 1225. Substitute project.

"Sec. 1226. Fiscal, administrative, and other amendments.'"

(c) METROPOLITAN PLANNING TECHNICAL ADJUSTMENT.—Section 1203 of such Act is amended by adding at the end the following:

"(o) TECHNICAL ADJUSTMENT.—Section 134(h)(5)(A) of title 23, United States Code (as amended by subsection (h) of this section), is amended by striking 'for implementation'."

(d) AMENDMENTS TO PRIOR SURFACE TRANSPORTATION LAWS.—Section 1211 of such Act is amended—

(1) in subsection (i)(3)(E) by striking "subparagraph (D)" and inserting "subparagraph (C)";

(2) in subsection (i) by adding at the end the following:

"(4) TECHNICAL AMENDMENTS.—Section 1105(e)(5)(B)(i) of such Act (as amended by paragraph (3) of this subsection) is amended—

"(A) by striking 'subsection (c)(18)(B)(i)' and inserting 'subsection (c)(18)(D)(i)';

“(B) by striking ‘subsection (c)(18)(B)(ii)’ and inserting ‘subsection (c)(18)(D)(ii)’; and

“(C) by adding at the end the following: ‘The portion of the route referred to in subsection (c)(36) is designated as Interstate Route 1-86.’”;

(3) by striking subsection (j);

(4) in subsection (k)—

(A) by striking “along” in paragraph (1) and inserting “from”; and

(B) by adding at the end the following:

“(4) TEXAS STATE HIGHWAY 99.—Texas State Highway 99 (also known as ‘Grand Parkway’) shall be considered as 1 option in the I-69 route studies performed by the Texas Department of Transportation for the designation of I-69 Bypass in Houston, Texas.”; and

(5) by redesignating subsections (g) through (i) and (k) through (n) as subsections (f) through (h) and (i) through (l), respectively.

(e) MISCELLANEOUS.—Section 1212 of such Act is amended—

(1) in the second sentence of subsection (q)(1) by striking “advance curriculum” and inserting “advanced curriculum”;

(2) in subsection (r)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) \$2,000,000 for fiscal year 1999 and \$2,500,000 for fiscal year 2000.”;

(3) in subsection (s)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) \$23,000,000 for fiscal year 1999.”;

(4) in subsection (u)—

(A) by inserting “the Secretary shall approve, and” before “the Commonwealth”;

(B) by inserting a comma after “with”; and

(C) by inserting “(as redefined by this Act)” after “80”; and

(5) by redesignating subsections (k) through (z) as subsections (e) through (t), respectively.

(f) PUERTO RICO HIGHWAY PROGRAM.—Section 1214(r) of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

“(3) TREATMENT OF FUNDS.—Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

“(A) For purposes of this subsection, such amounts shall be treated as being apportioned to Puerto Rico under sections 104(b), 144, and 206 of title 23, United States Code, for each program funded under such sections in an amount determined by multiplying—

“(i) the aggregate of such amounts for the fiscal year; by

“(ii) the ratio that—

“(I) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

“(II) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

“(B) The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under such section for purposes of the imposition of any penalty provisions in titles 23 and 49, United States Code.

“(C) Subject to subparagraph (B), nothing in this subsection shall be construed as affecting any allocation under section 105 of title 23, United States Code, and any apportionment under sections 104 and 144 of such title.”.

(g) DESIGNATED TRANSPORTATION ENHANCEMENT ACTIVITIES.—Section 1215 of such Act—

(1) is amended in each of subsections (d), (e), (f), and (g)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) the amounts specified in such paragraph for the fiscal years specified in such paragraph.”; and

(2) in subsection (d)(1) by inserting “on Route 50” after “measures”.

(h) ELIGIBILITY.—Section 1217 of such Act is amended—

(1) in subsection (d) by striking “104(b)(4)” and inserting “104(b)(5)(A)”;

(2) in subsection (i) by striking “120(l)(1)” and inserting “120(j)(1)”;

(3) in subsection (j) by adding at the end the following: “\$3,000,000 of the amounts made available for item 164 of the table contained in section 1602 shall be made available on October 1, 1998, to the Pennsylvania Turnpike Commission to carry out this subsection.”.

(i) MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM.—Section 1218 of such Act is amended by adding at the end the following:

“(c) TECHNICAL AMENDMENTS.—Section 322 of title 23, United States Code (as added by subsection (a) of this section), is amended—

“(1) in subsection (a)(3) by striking ‘or under 50 miles per hour’;

“(2) in subsection (d)—

“(A) in paragraph (1) by striking ‘or low-speed’; and

“(B) in paragraph (2)—

“(i) in subparagraph (A) by striking ‘(h)(1)(A)’ and inserting ‘(h)(1)’; and

“(ii) in subparagraph (B) by striking ‘(h)(4)’ and inserting ‘(h)(3)’;

“(3) in subsection (h)(1)(B)(i) by inserting ‘(other than subsection (i))’ after ‘this section’; and

“(4) by adding at the end the following:

“(i) LOW-SPEED PROJECT.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, of the funds made available by subsection (h)(1)(A) to carry out this section, \$5,000,000 shall be made available to the Secretary to make grants for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

“(2) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

“(A) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003.

“(B) AVAILABILITY.—Notwithstanding section 118(a), funds made available under subparagraph (A)—

“(i) shall not be available in advance of an annual appropriation; and

“(ii) shall remain available until expended.”.

(j) TRANSPORTATION ASSISTANCE FOR OLYMPIC CITIES.—Section 1223(f) of such Act is amended by inserting before the period at the end the following: “or Special Olympics International”.

SEC. 9004. RESTORATIONS TO PROGRAM STREAMLINING AND FLEXIBILITY SUBTITLE.

(a) IN GENERAL.—Subtitle C of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

“**SEC. 1311. DISCRETIONARY GRANT SELECTION CRITERIA AND PROCESS.**

“(a) ESTABLISHMENT OF CRITERIA.—The Secretary shall establish criteria for all discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account). To the extent practicable, such criteria

shall conform to the Executive Order No. 12893 (relating to infrastructure investment).

“(b) SELECTION PROCESS.—

“(1) LIMITATION ON ACCEPTANCE OF APPLICATIONS.—Before accepting applications for grants under any discretionary program for which funds are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by this Act (including the amendments made by this Act), the Secretary shall publish the criteria established under subsection (a). Such publication shall identify all statutory criteria and any criteria established by regulation that will apply to the program.

“(2) EXPLANATION.—Not less often than quarterly, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of the projects selected under discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account) and an explanation of how the projects were selected based on the criteria established under subsection (a).

“(c) MINIMUM COVERED PROGRAMS.—At a minimum, the criteria established under subsection (a) and the selection process established by subsection (b) shall apply to the following programs:

“(1) The intelligent transportation system deployment program under title V.

“(2) The national corridor planning and development program.

“(3) The coordinated border infrastructure and safety program.

“(4) The construction of ferry boats and ferry terminal facilities.

“(5) The national scenic byways program.

“(6) The Interstate discretionary program.

“(7) The discretionary bridge program.”.

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of such Act is amended—

(1) by striking the following:

“Sec. 1309. Major investment study integration.”.

and inserting the following:

“Sec. 1308. Major investment study integration.”;

and

(2) by inserting after the item relating to section 1310 the following:

“Sec. 1311. Discretionary grant selection criteria and process.”.

(c) REVIEW PROCESS.—Section 1309 of the Transportation Equity Act for the 21st Century is amended—

(1) in subsection (a)(1) by inserting after “highway construction” the following: “and mass transit”;

(2) in subsection (d) by inserting after “Code,” the following: “or chapter 53 of title 49, United States Code.”; and

(3) in subsection (e)(1)—

(A) by inserting “or recipient” after “a State”;

(B) by inserting after “provide funds” the following: “for a highway project”; and

(C) by inserting after “Code,” the following: “or for a mass transit project made available under chapter 53 of title 49, United States Code.”.

SEC. 9005. RESTORATIONS TO SAFETY SUBTITLE.

(a) IN GENERAL.—Subtitle D of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

“**SEC. 1405. OPEN CONTAINER LAWS.**

“(a) ESTABLISHMENT.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

“**§ 154. Open container requirements**

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) ALCOHOLIC BEVERAGE.—The term “alcoholic beverage” has the meaning given the term in section 158(c).

'(2) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

'(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term "open alcoholic beverage container" means any bottle, can, or other receptacle—

'(A) that contains any amount of alcoholic beverage; and

'(B)(i) that is open or has a broken seal; or
'(ii) the contents of which are partially removed.

'(4) PASSENGER AREA.—The term "passenger area" shall have the meaning given the term by the Secretary by regulation.

'(b) OPEN CONTAINER LAWS.—

'(1) IN GENERAL.—For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

'(2) MOTOR VEHICLES DESIGNED TO TRANSPORT MANY PASSENGERS.—For the purposes of this section, if a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger)—

'(A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or

'(B) in the living quarters of a house coach or house trailer,

the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

'(c) TRANSFER OF FUNDS.—

'(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

'(A) to be used for alcohol-impaired driving countermeasures; or

'(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

'(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

'(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

'(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

'(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from 1 or more of the following:

'(A) The apportionment of the State under section 104(b)(1).

'(B) The apportionment of the State under section 104(b)(3).

'(C) The apportionment of the State under section 104(b)(4).

'(6) TRANSFER OF OBLIGATION AUTHORITY.—

'(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

'(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

'(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year; by

'(ii) the ratio that—

'(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

'(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

'(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

'(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by inserting after the item relating to section 153 the following:

'154. Open container requirements.'

"SEC. 1406. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

"(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"§164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

'(a) DEFINITIONS.—In this section, the following definitions apply:

'(1) ALCOHOL CONCENTRATION.—The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

'(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

'(3) LICENSE SUSPENSION.—The term "license suspension" means the suspension of all driving privileges.

'(4) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

'(5) REPEAT INTOXICATED DRIVER LAW.—The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

'(A) receive a driver's license suspension for not less than 1 year;

'(B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

'(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

'(D) receive—

'(i) in the case of the second offense—

'(I) an assignment of not less than 30 days of community service; or

'(II) not less than 5 days of imprisonment; and

'(ii) in the case of the third or subsequent offense—

'(I) an assignment of not less than 60 days of community service; or

'(II) not less than 10 days of imprisonment.

'(b) TRANSFER OF FUNDS.—

'(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

'(A) to be used for alcohol-impaired driving countermeasures; or

'(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

'(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

'(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

'(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

'(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from 1 or more of the following:

'(A) The apportionment of the State under section 104(b)(1).

'(B) The apportionment of the State under section 104(b)(3).

'(C) The apportionment of the State under section 104(b)(4).

'(6) TRANSFER OF OBLIGATION AUTHORITY.—

'(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

'(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

'(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year; by

'(ii) the ratio that—

'(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

'(II) the total of the sums apportioned to the State for Federal-aid highways and highway

safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by adding at the end the following:

‘164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.’.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of such Act is amended by inserting after the item relating to section 1403 the following:

‘Sec. 1404. Safety incentives to prevent operation of motor vehicles by intoxicated persons.

‘Sec. 1405. Open container laws.

‘Sec. 1406. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.’.

(c) ROADSIDE SAFETY TECHNOLOGIES.—Section 1402(a)(2) of such Act is amended by striking ‘directive’ and inserting ‘redirective’.

SEC. 9006. ELIMINATION OF DUPLICATE PROVISIONS.

(a) SAN MATEO COUNTY, CALIFORNIA.—Section 1113 of the Transportation Equity Act for the 21st Century is amended—

(1) by striking subsection (c); and
(2) by redesignating subsection (c) as subsection (d).

(b) VALUE PRICING PILOT PROGRAM.—Section 1216(a) of such Act is amended by adding at the end the following:

‘(8) CONFORMING AMENDMENTS.—

‘(A) Section 1012(b)(6) of such Act (as amended by paragraph (5) of this subsection) is amended by striking ‘146(c)’ and inserting ‘102(a)’.

‘(B) Section 1012(b)(8) of such Act (as added by paragraph (7) of this subsection) is amended—

‘(i) in subparagraph (C) by striking ‘under this subsection’ and inserting ‘to carry out this subsection’;

‘(ii) in subparagraph (D)—
‘(I) by striking ‘under this paragraph’ and inserting ‘to carry out this subsection’; and
‘(II) by striking ‘by this paragraph’ and inserting ‘to carry out this subsection’;

‘(iii) by striking subparagraph (A); and
‘(iv) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.’.

(c) NATIONAL DEFENSE HIGHWAYS OUTSIDE THE UNITED STATES.—Section 1214(e) of such Act is amended to read as follows:

‘(e) MINNESOTA TRANSPORTATION HISTORY NETWORK.—

‘(1) IN GENERAL.—The Secretary shall award a grant to the Minnesota Historical Society for the establishment of the Minnesota Transportation History Network to include major exhibits, interpretive programs at national historic landmark sites, and outreach programs with county and local historical organizations.

‘(2) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate with officials of the Minnesota Historical Society.

‘(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) \$1,000,000 for each of fiscal years 1998 through 2003 to carry out this subsection.

‘(4) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23,

United States Code; except that such funds shall remain available until expended.’.

(d) ENTRANCE PAVING AT NINIGRET NATIONAL WILDLIFE REFUGE.—Section 1214(i) of such Act is amended by striking ‘\$750,000’ each place it appears and inserting ‘\$75,000’.

SEC. 9007. HIGHWAY FINANCE.

(a) IN GENERAL.—Section 1503 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

‘(c) TECHNICAL AMENDMENTS.—Section 188 of title 23, United States Code (as added by subsection (a) of this section), is amended—

‘(1) in subsection (a)(2) by striking ‘1998’ and inserting ‘1999’; and

‘(2) in subsection (c)—
‘(A) by striking ‘1998’ and inserting ‘1999’; and

‘(B) by striking the table and inserting the following:

Fiscal year:	Maximum amount of credit:
1999	\$1,600,000,000
2000	\$1,800,000,000
2001	\$2,200,000,000
2002	\$2,400,000,000
2003	\$2,600,000,000.’.

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of the Transportation Equity Act for the 21st Century is amended—

(1) in the item relating to section 1119 by striking ‘and safety’; and

(2) by striking the items relating to subtitle E of title I and inserting the following:

“Subtitle E—Finance

“CHAPTER 1—TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION

“Sec. 1501. Short title.

“Sec. 1502. Findings.

“Sec. 1503. Establishment of program.

“Sec. 1504. Duties of the Secretary.

“CHAPTER 2—STATE INFRASTRUCTURE BANK PILOT PROGRAM

“Sec. 1511. State infrastructure bank pilot program.’.

SEC. 9008. HIGH PRIORITY PROJECTS TECHNICAL CORRECTIONS.

The table contained in section 1602 of the Transportation Equity Act for the 21st Century is amended—

(1) in item 1 by striking ‘1.275’ and inserting ‘1.7’;

(2) in item 82 by striking ‘30.675’ and inserting ‘32.4’;

(3) in item 107 by striking ‘1.125’ and inserting ‘1.44’;

(4) in item 121 by striking ‘10.5’ and inserting ‘5.0’;

(5) in item 140 by inserting ‘—VFHS Center’ after ‘Park’;

(6) in item 151 by striking ‘5.666’ and inserting ‘8.666’;

(7) in item 164—

(A) by inserting ‘, and \$3,000,000 for the period of fiscal years 1998 and 1999 shall be made available to carry out section 1217(j)’ after ‘Pennsylvania’; and

(B) by striking ‘25’ and inserting ‘24.78’;

(8) by striking item 166 and inserting the following:

‘166.	Michigan	Improve Tenth Street, Port Huron	1.8”;
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(9) by striking item 242 and inserting the following:

‘242.	Minnesota.	Construct Third Street North, CSAH 81, Waite Park and St. Cloud	1.0”;
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(10) by striking item 250 and inserting the following:

‘250.	Indiana	Reconstruct Old Merridan Corridor from Pennsylvania Avenue to Gilford Road	1.35”;
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(11) in item 255 by striking ‘2.25’ and inserting ‘3.0’;

(12) in item 263 by striking ‘Upgrade Highway 99 between State Highway 70 and Lincoln Road, Sutter County’ and inserting ‘Upgrade Highway 99, Sutter County’;

(13) in item 288 by striking ‘3.75’ and inserting ‘5.0’;

(14) in item 290 by striking ‘3.5’ and inserting ‘3.0’;

(15) in item 345 by striking ‘8’ and inserting ‘19.4’;

(16) in item 418 by striking ‘2’ and inserting ‘2.5’;

(17) in item 421 by striking ‘11’ and inserting ‘6’;

(18) in item 508 by striking ‘1.8’ and inserting ‘2.4’;

(19) by striking item 525 and inserting the following:

‘525.	Alaska	Construct Bradfield Canal Road	1”;
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(20) in item 540 by striking ‘1.5’ and inserting ‘2.0’;

(21) in item 576 by striking ‘0.52275’ and inserting ‘0.69275’;

(22) in item 588 by striking ‘2.5’ and inserting ‘3.0’;

(23) in item 591 by striking ‘10’ and inserting ‘5’;

(24) in item 635 by striking ‘1.875’ and inserting ‘2.15’;

(25) in item 669 by striking ‘3’ and inserting ‘3.5’;

(26) in item 702 by striking ‘10.5’ and inserting ‘10’;

(27) in item 746 by inserting ‘, and for the purchase of the Block House in Scott County, Virginia’ after ‘Forest’;

(28) in item 755 by striking ‘1.125’ and inserting ‘1.5’;

(29) in item 769 by striking ‘Construct new I-95 interchange with Highway 99W, Tehama County’ and inserting ‘Construct new I-5 interchange with Highway 99W, Tehama County’;

(30) in item 770 by striking ‘1.35’ and inserting ‘1.0’;

(31) in item 789 by striking ‘2.0625’ and inserting ‘1.0’;

(32) in item 803 by striking ‘Tomahark’ and inserting ‘Tomahawk’;

(33) in item 836 by striking ‘Construct’ and all that follows through ‘for’ and inserting ‘To the National Park Service for construction of the’;

(34) in item 854 by striking ‘0.75’ and inserting ‘1’;

(35) in item 863 by striking ‘9’ and inserting ‘4.75’;

(36) in item 887 by striking ‘0.75’ and inserting ‘3.21’;

(37) in item 891 by striking ‘19.5’ and inserting ‘25.0’;

(38) in item 902 by striking ‘10.5’ and inserting ‘14.0’;

(39) by striking item 1065 and inserting the following:

‘1065.	Texas	Construct a 4-lane divided highway on Arcraft Road from I-10 to Route 375 in El Paso	5”;
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(40) in item 1192 by striking ‘24.97725’ and inserting ‘24.57725’;

(41) in item 1200 by striking ‘Upgrade (all weather) on U.S. 2, U.S. 41, and M 35’ and inserting ‘Upgrade (all weather) on Delta County’s reroute of U.S. 2, U.S. 41, and M 35’;

(42) in item 1245 by striking ‘3’ and inserting ‘3.5’;

- (43) in item 1271 by striking "Spur" and all that follows through "U.S. 59" and inserting "rail-grade separations (Rosenberg Bypass) at U.S. 59(S)";
- (44) in item 1278 by striking "28.18" and inserting "22.0";
- (45) in item 1288 by inserting "30" after "U.S.";
- (46) in item 1338 by striking "5.5" and inserting "3.5";
- (47) in item 1383 by striking "0.525" and inserting "0.35";
- (48) in item 1395 by striking "Construct" and all that follows through "Road" and inserting "Upgrade Route 219 between Meyersdale and Somerset";
- (49) in item 1468 by striking "Reconstruct" and all that follows through "U.S. 23" and inserting "Conduct engineering and design and improve I-94 in Calhoun and Jackson Counties";
- (50) in item 1474—
 - (A) by striking "in Euclid" and inserting "and London Road in Cleveland"; and
 - (B) by striking "3.75" and inserting "8.0";
- (51) in item 1535 by striking "Stanford" and inserting "Stamford";
- (52) in item 1538 by striking "and Winchester" and inserting ", Winchester, and Torrington";
- (53) by striking item 1546 and inserting the following:

"1546.	Michigan.	Construct Bridge-to-Bay bike path, St. Clair County	0.450";
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(54) by striking item 1549 and inserting the following:

"1549.	New York.	Center for Advanced Simulation and Technology, at Dowling College	0.6";
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- (55) in item 1663 by striking "26.5" and inserting "27.5";
- (56) in item 1703 by striking "I-80" and inserting "I-180";
- (57) in item 1726 by striking "I-179" and inserting "I-79";
- (58) by striking item 1770 and inserting the following:

"1770.	Virginia	Operate and conduct research on the 'Smart Road' in Blacksburg	6.025";
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- (59) in item 1810 by striking "Construct Rio Rancho Highway" and inserting "Northwest Albuquerque/Rio Rancho high priority roads";
- (60) in item 1815 by striking "High" and all that follows through "projects" and inserting "Highway and bridge projects that Delaware provides for by law";
- (61) in item 1844 by striking "Prepare" and inserting "Repair";
- (62) by striking item 1850 and inserting the following:

"1850.	Missouri	Resurface and maintain roads located in Missouri State parks	5";
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- (63) in item 661 by striking "SR 800" and inserting "SR 78";
- (64) in item 1704 by inserting ", Pittsburgh," after "Road";
- (65) in item 1710 by inserting ", Bethlehem" after "site"; and
- (66) in item 1626 by striking "1" and inserting "2".

SEC. 9009. FEDERAL TRANSIT ADMINISTRATION PROGRAMS.

(a) DEFINITIONS.—Section 3003 of the Federal Transit Act of 1998 is amended—
 (1) by inserting "(a) IN GENERAL.—" before "Section 5302"; and

- (2) by adding at the end the following:
 "(b) CONFORMING AMENDMENTS.—Section 5302 (as amended by subsection (a) of this section) is amended in subsection (a)(1)(G)(i) by striking 'daycare and' and inserting 'daycare or'."
- (b) METROPOLITAN PLANNING.—Section 3004 of the Federal Transit Act of 1998 is amended—
 - (1) in subsection (b)—
 - (A) in paragraph (1) by striking subparagraph (A) and inserting the following:
 "(A) by striking 'general local government representing' and inserting 'general purpose local government that together represent'; and";
 - (B) in paragraph (3) by striking "and" at the end;
 - (C) in paragraph (4) by striking subparagraph (A) and inserting the following:
 "(A) by striking 'general local government representing' and inserting 'general purpose local government that together represent'; and";
 - (D) by redesignating paragraph (4) as paragraph (5); and
 - (E) by inserting after paragraph (3) the following:
 "(3) in paragraph (4)(A) by striking '(3)' and inserting '(5)'; and";
 - (2) in subsection (d) by striking the closing quotation marks and the final period at the end and inserting the following:
 '(5) COORDINATION.—If a project is located within the boundaries of more than 1 metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.
 - (6) LAKE TAHOE REGION.—
 - (A) DEFINITION.—In this paragraph, the term "Lake Tahoe region" has the meaning given the term "region" in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96-551 (94 Stat. 3234).
 - (B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—
 - (i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and
 - (ii) coordinate the transportation planning process with the planning process required of State and local governments under this chapter and sections 134 and 135 of title 23.
 - (C) INTERSTATE COMPACT.—
 - (i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law.
 - (ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—
 - (I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.
 - (II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this chapter and under title 23, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.
 - (D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—
 - (i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

- (ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.'"; and
- (3) by adding at the end the following:
 "(f) TECHNICAL ADJUSTMENTS.—Section 5303(f) is amended—
 - "(1) in paragraph (1) (as amended by subsection (e)(1) of this subsection)—
 - "(A) in subparagraph (C) by striking 'and' at the end;
 - "(B) in subparagraph (D) by striking the period at the end and inserting "; and";
 - "(C) by adding at the end the following:
 '(E) the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range plan if reasonable additional resources beyond those identified in the financial plan were available, except that, for the purpose of developing the long-range plan, the metropolitan planning organization and the State shall cooperatively develop estimates of funds that will be available to support plan implementation.'; and
 - "(2) by adding at the end the following:
 '(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (1)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (1)(B).';"
 - (c) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—Section 3005 of the Federal Transit Act of 1998 is amended—
 - (1) in the section heading by inserting "metropolitan" before "transportation"; and
 - (2) by adding at the end the following:
 "(d) TECHNICAL ADJUSTMENTS.—Section 5304 is amended—
 - "(1) in subsection (a) (as amended by subsection (a) of this section)—
 - "(A) by striking 'In cooperation with' and inserting the following:
 '(1) IN GENERAL.—In cooperation with'; and
 - "(B) by adding at the end the following:
 '(2) FUNDING ESTIMATE.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.'; and
 - "(2) in subsection (b)(2)—
 - "(A) in subparagraph (B) by striking 'and' at the end; and
 - "(B) in subparagraph (C) (as added by subsection (b) of this section) by striking 'strategies which may include' and inserting the following:
 'strategies; and
 - "(D) may include'; and
 - "(3) in subsection (c) by striking paragraph (4) (as amended by subsection (c) of this section) and inserting the following:
 '(4) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—
 - (A) IN GENERAL.—Notwithstanding subsection (b)(2)(D), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(D).
 - (B) ACTION BY SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the plan under subsection (b)(2) for inclusion in an approved transportation improvement plan.'"
 - (d) TRANSPORTATION MANAGEMENT AREAS.—Section 3006(d) of the Federal Transit Act of 1998 is amended to read as follows:
 "(d) PROJECT SELECTION.—Section 5305(d)(1) is amended to read as follows: '(1)(A) All federally funded projects carried out within the boundaries of a transportation management area under title 23 (excluding projects carried out on the National Highway System and

projects carried out under the bridge and interstate maintenance program) or under this chapter shall be selected from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

(B) Projects carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the interstate maintenance program shall be selected from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area. "

(e) URBANIZED AREA FORMULA GRANTS.—Section 3007 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(h) TECHNICAL ADJUSTMENTS.—

"(1) GENERAL AUTHORITY.—Section 5307(b) (as amended by subsection (c)(1)(B) of this section) is amended by adding at the end the following: 'The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000.'

"(2) REPORT.—Section 5307(k)(3) (as amended by subsection (f) of this section) is amended by inserting 'preceding' before 'fiscal year'."

(f) CLEAN FUELS FORMULA GRANT PROGRAM.—Section 3008 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 5308(e)(2) (as added by subsection (a) of this section) is amended by striking '\$50,000,000' and inserting '\$5 percent'."

(g) CAPITAL INVESTMENT GRANTS AND LOANS.—Section 3009 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(k) TECHNICAL ADJUSTMENTS.—

"(1) CRITERIA.—Section 5309(e) (as amended by subsection (e) of this section) is amended—

"(A) in paragraph (3)(C) by striking 'urban' and inserting 'suburban';

"(B) in the second sentence of paragraph (6) by striking 'or not' and all that follows through 'based' and inserting 'or "not recommended", based'; and

"(C) in the last sentence of paragraph (6) by inserting 'of the' before 'criteria established'."

"(2) LETTERS OF INTENT AND FULL FUNDING GRANT AGREEMENTS.—Section 5309(g) (as amended by subsection (f) of this section) is amended in paragraph (4) by striking '5338(a)' and all that follows through '2003' and inserting '5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(h)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems'."

"(3) ALLOCATING AMOUNTS.—Section 5309(m) (as amended by subsection (g) of this section) is amended—

"(A) in paragraph (1) by inserting '(b)' after '5338';

"(B) by striking paragraph (2) and inserting the following:

'(2) NEW FIXED GUIDEWAY GRANTS.—

(A) LIMITATION ON AMOUNTS AVAILABLE FOR ACTIVITIES OTHER THAN FINAL DESIGN AND CONSTRUCTION.—Not more than 8 percent of the amounts made available in each fiscal year by paragraph (1)(B) shall be available for activities other than final design and construction.

(B) FUNDING FOR FERRY BOAT SYSTEMS.—

(i) AMOUNTS UNDER (1)(B).—Of the amounts made available under paragraph (1)(B), \$10,400,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway

systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

(ii) AMOUNTS UNDER 5338(H)(5).—Of the amounts appropriated under section 5338(h)(5), \$3,600,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities. "

"(C) by redesignating paragraph (4) as paragraph (3)(C);

"(D) in paragraph (3) by adding at the end the following:

'(D) OTHER THAN URBANIZED AREAS.—Of amounts made available by paragraph (1)(C), not less than 5.5 percent shall be available in each fiscal year for other than urbanized areas. "

"(E) by striking paragraph (5); and

"(F) by inserting after paragraph (3) the following:

'(4) ELIGIBILITY FOR ASSISTANCE FOR MULTIPLE PROJECTS.—A person applying for or receiving assistance for a project described in subparagraph (A), (B), or (C) of paragraph (1) may receive assistance for a project described in any other of such subparagraphs. "

(h) REFERENCES TO FULL FUNDING GRANT AGREEMENTS.—Section 3009(h)(3) of the Federal Transit Act of 1998 is amended—

(1) by striking "and" at the end of subparagraph (A)(ii);

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(3) by adding at the end the following:

"(C) in section 5328(a)(4) by striking 'section 5309(m)(2) of this title' and inserting '5309(o)(1)'; and

"(D) in section 5309(n)(2) by striking 'in a way' and inserting 'in a manner'."

(i) DOLLAR VALUE OF MOBILITY IMPROVEMENTS.—Section 3010(b)(2) of the Federal Transit Act of 1998 is amended by striking "Secretary" and inserting "Comptroller General".

(j) INTELLIGENT TRANSPORTATION SYSTEM APPLICATIONS.—Section 3012 of the Federal Transit Act of 1998 is amended by moving paragraph (3) of subsection (a) to the end of subsection (b) and by redesignating such paragraph (3) as paragraph (4).

(k) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015 of the Federal Transit Act of 1998 is amended—

(1) in subsection (c)(2) by adding at the end the following: "Financial assistance made available under this subsection and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code. "; and

(2) by adding at the end the following:

"(d) TRAINING AND CURRICULUM DEVELOPMENT.—

(1) IN GENERAL.—Any funds made available by section 5338(e)(2)(C)(iii) of title 49, United States Code, shall be available in equal amounts for transportation research, training, and curriculum development at institutions identified in subparagraphs (E) and (F) of section 5505(j)(3) of such title.

"(2) SPECIAL RULE.—If the institutions identified in paragraph (1) are selected pursuant to 5505(i)(3)(B) of such title in fiscal year 2002 or 2003, the funds made available to carry out this subsection shall be available to those institutions to carry out the activities required pursuant to section 5505(i)(3)(B) of such title for that fiscal year."

(l) NATIONAL TRANSIT INSTITUTE.—Section 3017(a) of the Federal Transit Act of 1998 is amended to read as follows:

"(a) IN GENERAL.—Section 5315 is amended—

"(1) in the section heading by striking 'mass transportation' and inserting 'transit';

"(2) in subsection (a)—

"(A) by striking 'mass transportation' in the first sentence and inserting 'transit';

"(B) in paragraph (5) by inserting 'and architectural design' before the semicolon at the end;

"(C) in paragraph (7) by striking 'carrying out' and inserting 'delivering';

"(D) in paragraph (11) by inserting 'construction management, insurance, and risk management' before the semicolon at the end;

"(E) in paragraph (13) by striking 'and' at the end;

"(F) in paragraph (14) by striking the period at the end and inserting a semicolon; and

"(G) by adding at the end the following:

'(15) innovative finance; and

'(16) workplace safety. "

(m) PILOT PROGRAM.—Section 3021(a) of the Federal Transit Act of 1998 is amended by inserting 'single-State' before "pilot program".

(n) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—Section 3022 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(b) CONFORMING AMENDMENT.—Section 5325(b) (as redesignated by subsection (a)(2) of this section) is amended—

"(1) by inserting 'or requirement' after 'A contract'; and

"(2) by inserting before the last sentence the following: 'When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23. "

(o) CONFORMING AMENDMENT.—Section 3027 of the Federal Transit Act of 1998 is amended—

(1) in subsection (c) by striking "600,000" each place it appears and inserting "900,000"; and

(2) by adding at the end the following:

"(d) CONFORMING AMENDMENT.—The item relating to section 5336 in the table of sections for chapter 53 is amended by striking 'block grants' and inserting 'formula grants'."

(p) APPORTIONMENT FOR FIXED GUIDEWAY MODERNIZATION.—Section 3028 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(c) CONFORMING AMENDMENTS.—Section 5337(a) (as amended by subsection (a) of this section) is amended—

"(1) in paragraph (2)(B) by striking '(e)' and inserting '(e)(1)';

"(2) in paragraph (3)(D)—

"(A) by striking '(ii)'; and

"(B) by striking '(e)' and inserting '(e)(1)';

"(3) in paragraph (4) by striking '(e)' and inserting '(e)(1)';

"(4) in paragraph (5)(A) by striking '(e)' and inserting '(e)(2)';

"(5) in paragraph (5)(B) by striking '(e)' and inserting '(e)(2)';

"(6) in paragraph (6) by striking '(e)' each place it appears and inserting '(e)(2)'; and

"(7) in paragraph (7) by striking '(e)' each place it appears and inserting '(e)(2)'"."

(q) AUTHORIZATIONS.—Section 3029 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 5338 (as amended by subsection (a) of this section) is amended—

"(1) in subsection (c)(2)(A)(i) by striking '\$43,200,000' and inserting '\$42,200,000';

"(2) in subsection (c)(2)(A)(ii) by striking '\$46,400,000' and inserting '\$48,400,000';

"(3) in subsection (c)(2)(A)(iii) by striking '\$51,200,000' and inserting '\$50,200,000';

"(4) in subsection (c)(2)(A)(iv) by striking '\$52,800,000' and inserting '\$53,800,000';

"(5) in subsection (c)(2)(A)(v) by striking '\$57,600,000' and inserting '\$58,600,000';

"(6) in subsection (d)(2)(C)(iii) by inserting before the semicolon, including not more than \$1,000,000 shall be available to carry out section 5315(a)(16)";

"(7) in subsection (e)—

"(A) by striking '5317(b)' each place it appears and inserting '5505';

“(B) in paragraph (1) by striking ‘There are’ and inserting ‘Subject to paragraph (2)(C), there are’;

“(C) in paragraph (2)—

“(i) in subparagraph (A) by striking ‘There shall’ and inserting ‘Subject to subparagraph (C), there shall’;

“(ii) in subparagraph (B) by striking ‘In addition’ and inserting ‘Subject to subparagraph (C), in addition’; and

“(iii) by adding at the end the following:

“(C) FUNDING OF CENTERS.—

“(i) Of the amounts made available under subparagraph (A) and paragraph (1) for each fiscal year—

“(I) \$2,000,000 shall be available for the center identified in section 5505(j)(4)(A); and

“(II) \$2,000,000 shall be available for the center identified in section 5505(j)(4)(F).

“(ii) For each of fiscal years 1998 through 2001, of the amounts made available under this paragraph and paragraph (1)—

“(I) \$400,000 shall be available from amounts made available under subparagraph (A) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3); and

“(II) \$350,000 shall be available from amounts made available under subparagraph (B) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3).

“(iii) Any amounts made available under this paragraph or paragraph (1) for any fiscal year that remain after distribution under clauses (i) and (ii), shall be available for the purposes identified in section 3015(d) of the Federal Transit Act of 1998.”; and

“(D) by adding at the end the following:

“(3) SPECIAL RULE.—Nothing in this subsection shall be construed to limit the transportation research conducted by the centers funded by this section.”;

“(8) in subsection (g)(2) by striking ‘(c)(2)(B),’ and all that follows through ‘(f)(2)(B),’ and inserting ‘(c)(1), (c)(2)(B), (d)(1), (d)(2)(B), (e)(1), (e)(2)(B), (f)(1), (f)(2)(B).’;

“(9) in subsection (h) by inserting ‘under the Transportation Discretionary Spending Guarantee for the Mass Transit Category’ after ‘through (f)’; and

“(10) in subsection (h)(5) by striking subparagraphs (A) through (E) and inserting the following:

“(A) for fiscal year 1999 \$400,000,000;

“(B) for fiscal year 2000 \$410,000,000;

“(C) for fiscal year 2001 \$420,000,000;

“(D) for fiscal year 2002 \$430,000,000; and

“(E) for fiscal year 2003 \$430,000,000.”;

(r) PROJECTS FOR FIXED GUIDEWAY SYSTEMS.—Section 3030 of the Federal Transit Act of 1998 is amended—

(1) in subsection (a)—

(A) in paragraph (8) by inserting “North-” before “South”;

(B) in paragraph (42) by striking “Maryland” and inserting “Baltimore”;

(C) in paragraph (103) by striking “busway” and inserting “Boulevard transitway”;

(D) in paragraph (106) by inserting “CTA” before “Douglas”;

(E) by striking paragraph (108) and inserting the following:

“(108) Greater Albuquerque Mass Transit Project.”; and

(F) by adding at the end the following:

“(109) Hartford City Light Rail Connection to Central Business District.

“(110) Providence-Boston Commuter Rail.

“(111) New York-St. George’s Ferry Intermodal Terminal.

“(112) New York-Midtown West Ferry Terminal.

“(113) Pinellas County-Mobility Initiative Project.

“(114) Atlanta-MARTA Extension (S. De Kalb-Lindbergh).”;

(2) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

“(2) Sioux City-Light Rail.”;

(B) by striking paragraph (40) and inserting the following:

“(40) Santa Fe-El Dorado Rail Link.”;

(C) by striking paragraph (44) and inserting the following:

“(44) Albuquerque-High Capacity Corridor.”;

(D) by striking paragraph (53) and inserting the following:

“(53) San Jacinto-Branch Line (Riverside County).”;

(E) by adding at the end the following:

“(69) Chicago-Northwest Rail Transit Corridor.

“(70) Vermont-Burlington-Essex Commuter Rail.”; and

(3) in subsection (c)—

(A) in paragraph (1)(A)—

(i) in the matter preceding clause (i) by inserting “(even if the project is not listed in subsection (a) or (b))” before the colon;

(ii) by striking clause (ii) and inserting the following:

“(ii) San Diego Mission Valley and Mid-Coast Corridor, \$325,000,000.”;

(iii) by striking clause (v) and inserting the following:

“(v) Hartford City Light Rail Connection to Central Business District, \$33,000,000.”;

(iv) by striking clause (xxiii) and inserting the following:

“(xxiii) Kansas City-I-35 Commuter Rail, \$30,000,000.”;

(v) in clause (xxxii) by striking “Whitehall Ferry Terminal” and inserting “Staten Island Ferry-Whitehall Intermodal Terminal”;

(vi) by striking clause (xxxv) and inserting the following:

“(xxxv) New York-Midtown West Ferry Terminal, \$16,300,000.”;

(vii) in clause (xxxix) by striking “Allegheny County” and inserting “Pittsburgh”;

(viii) by striking clause (xvi) and inserting the following:

“(xvi) Northeast Indianapolis Corridor, \$10,000,000.”;

(ix) by striking clause (xxix) and inserting the following:

“(xxix) Greater Albuquerque Mass Transit Project, \$90,000,000.”;

(x) by striking clause (xliii) and inserting the following:

“(xliii) Providence-Boston Commuter Rail, \$10,000,000.”; and

(xi) by striking clause (li) and inserting the following:

“(li) Dallas-Ft. Worth RAILTRAN (Phase-II), \$12,000,000.”;

(B) by striking the heading for subsection (c)(2) and inserting “ADDITIONAL AMOUNTS”;

(C) in paragraph (3) by inserting after the first sentence the following: “The project shall also be exempted from all requirements relating to criteria for grants and loans for fixed guideway systems under section 5309(e) of such title and from regulations required under that section.”;

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3030(e) of the Federal Transit Act of 1998 is amended by adding at the end the following:

“(4) TECHNICAL ADJUSTMENT.—Section 3031(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (as amended by paragraph (3)(B) of this subsection) is amended—

“(A) by striking ‘of the West Shore Line’ and inserting ‘or the West Shore Line’; and

“(B) by striking ‘directly connected to’ and all that follows through ‘Newark International Airport’ the first place it appears.”;

(t) BALTIMORE-WASHINGTON TRANSPORTATION IMPROVEMENTS.—Section 3030 of the Federal Transit Act of 1998 is amended by adding at the end the following:

“(h) TECHNICAL ADJUSTMENT.—Section 3035(nn) of the Intermodal Surface Transpor-

tation Efficiency Act of 1991 (105 Stat. 2134) (as amended by subsection (g)(1)(C) of this section) is amended by inserting after ‘expenditure of the following: ‘section 5309 funds to the aggregate expenditure of.’.”;

(u) BUS PROJECTS.—Section 3031 of the Federal Transit Act of 1998 is amended—

(1) in the table contained in subsection (a)—

(A) by striking item 64;

(B) in item 69 by striking “Rensslear” each place it appears and inserting “Rensselaer”;

(C) in item 103 by striking “facilities and”;

(D) by striking item 150;

(2) by striking the heading for subsection (b) and inserting “ADDITIONAL AMOUNTS”;

(3) in subsection (b) by inserting after “2000” the first place it appears “with funds made available under section 5338(h)(6) of such title”;

and

(4) in item 2 of the table contained in subsection (b) by striking “Rensslear” each place it appears and inserting “Rensselaer”.

(v) CONTRACTING OUT STUDY.—Section 3032 of the Federal Transit Act of 1998 is amended—

(1) in subsection (a) by striking “3” and inserting “6”;

(2) in subsection (d) by striking “the Mass Transit Account of the Highway Trust Fund” and inserting “funds made available under section 5338(f)(2) of title 49, United States Code.”;

(3) in subsection (d) by striking “1998” and inserting “1999”;

(4) in subsection (e) by striking “subsection (c)” and inserting “subsection (d)”.

(w) JOB ACCESS AND REVERSE COMMUTE GRANTS.—Section 3037 of the Federal Transit Act of 1998 is amended—

(1) in subsection (b)(4)(A)—

(A) by inserting “designated recipients under section 5307(a)(2) of title 49, United States Code,” after “from among”;

(B) by inserting a comma after “and agencies”;

(2) in subsection (b)(4)(B)—

(A) by striking “at least” and inserting “less than”;

(B) by inserting “designated recipients under section 5307(a)(2) of title 49, United States Code,” after “from among”;

(C) by inserting “and agencies,” after “authorities”;

(3) in subsection (f)(2)—

(A) by striking “(including bicycling)”;

(B) by inserting “(including bicycling)” after “additional services”;

(4) in subsection (h)(2)(B) by striking “403(a)(5)(C)(ii)” and inserting “403(a)(5)(C)(vi)”;

(5) in the heading for subsection (l)(1)(C) by striking “FROM THE GENERAL FUND”;

(6) in subsection (l)(1)(C) by inserting “under the Transportation Discretionary Spending Guarantee for the Mass Transit Category” after “(B)”;

(7) in subsection (l)(3)(B) by striking “at least” and inserting “less than”.

(x) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038 of the Federal Transit Act of 1998 is amended—

(1) in subsection (a)(1)(A) by inserting before the semicolon “or connecting 1 or more rural communities with an urban area not in close proximity”;

(2) in subsection (g)(1)—

(A) by inserting “over-the-road buses used substantially or exclusively in” after “operators of”;

(B) by inserting at the end the following: “Such sums shall remain available until expended.”; and

(3) in subsection (g)(2)—

(A) by striking “each of”;

(B) by adding at the end the following: “Such sums shall remain available until expended.”.

(y) STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS.—Section 3039(b) of the Federal Transit Act of 1998 is amended—

(1) in paragraph (1) by striking "in order to carry" and inserting "assist in carrying"; and (2) by adding at the end the following:

"(3) DEFINITION.—For purposes of this subsection, the term 'Federal land management agencies' means the National Park Service, the United States Fish and Wildlife Service, and the Bureau of Land Management."

(z) OBLIGATION CEILING.—Section 3040 of the Federal Transit Act of 1998 is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) \$5,797,000,000 in fiscal year 2000"; and (3) in paragraph (4) by striking "\$6,746,000,000" and inserting "\$6,747,000,000".

SEC. 9010. MOTOR CARRIER SAFETY TECHNICAL CORRECTION.

Section 4011 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(h) TECHNICAL AMENDMENTS.—Section 31314 (as amended by subsection (g) of this section) is amended—

"(1) in subsections (a) and (b) by striking '(3), and (5)' each place it appears and inserting '(3), and (4)'; and

"(2) by striking subsection (d)."

SEC. 9011. RESTORATIONS TO RESEARCH TITLE.

(a) UNIVERSITY TRANSPORTATION RESEARCH FUNDING.—Section 5001(a)(7) of the Transportation Equity Act for the 21st Century is amended—

(1) by striking "\$31,150,000" each place it appears and inserting "\$25,650,000";

(2) by striking "\$32,750,000" each place it appears and inserting "\$27,250,000"; and

(3) by striking "\$32,000,000" each place it appears and inserting "\$26,500,000".

(b) OBLIGATION CEILING.—Section 5002 of such Act is amended by striking "\$403,150,000" and all that follows through "\$468,000,000" and inserting "\$397,650,000 for fiscal year 1998, \$403,650,000 for fiscal year 1999, \$422,450,000 for fiscal year 2000, \$437,250,000 for fiscal year 2001, \$447,500,000 for fiscal year 2002, and \$462,500,000".

(c) USE OF FUNDS FOR ITS.—Section 5210 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(d) USE OF INNOVATIVE FINANCING.—

"(1) IN GENERAL.—The Secretary may use up to 25 percent of the funds made available to carry out this subtitle to make available loans, lines of credit, and loan guarantees for projects that are eligible for assistance under this subtitle and that have significant intelligent transportation system elements.

"(2) CONSISTENCY WITH OTHER LAW.—Credit assistance described in paragraph (1) shall be made available in a manner consistent with the Transportation Infrastructure Finance and Innovation Act of 1998."

(d) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5110 of such Act is amended by adding at the end the following:

"(d) TECHNICAL ADJUSTMENTS.—Section 5505 of title 49, United States Code (as added by subsection (a) of this section), is amended—

"(1) in subsection (g)(2) by striking 'section 5506,' and inserting 'section 508 of title 23, United States Code,';

"(2) in subsection (i)—

"(A) by inserting 'Subject to section 5338(e):' after '(i) NUMBER AND AMOUNT OF GRANTS.—'; and

"(B) by striking 'institutions' each place it appears and inserting 'institutions or groups of institutions'; and

"(3) in subsection (j)(4)(B) by striking 'on behalf of' and all that follows before the period and inserting 'on behalf of a consortium which may also include West Virginia University Institute of Technology, the College of West Virginia, and Bluefield State College'."

(e) TECHNICAL CORRECTIONS.—Section 5115 of such Act is amended—

(1) in subsection (a) by striking "Director" and inserting "Director of the Bureau of Transportation Statistics";

(2) in subsection (b) by striking "Bureau" and inserting "Bureau of Transportation Statistics."; and

(3) in subsection (c) by striking "paragraph (1)" and inserting "subsection (a)".

(f) CORRECTIONS TO CERTAIN OKLAHOMA PROJECTS.—Section 5116 of such Act is amended—

(1) in subsection (e)(2) by striking "\$1,000,000 for fiscal year 1999, \$1,000,000 for fiscal year 2000, and \$500,000 for fiscal year 2001" and inserting "\$1,000,000 for fiscal year 1999, \$1,000,000 for fiscal year 2000, \$1,000,000 for fiscal year 2001, and \$500,000 for fiscal year 2002"; and

(2) in subsection (f)(2) by striking "\$1,000,000 for fiscal year 1999, \$1,000,000 for fiscal year 2001, and \$500,000 for fiscal year 2002" and inserting "\$1,000,000 for fiscal year 1999, \$1,000,000 for fiscal year 2000, and \$500,000 for fiscal year 2001".

(g) INTELLIGENT TRANSPORTATION INFRASTRUCTURE REFERENCE.—Section 5117(b)(3)(B)(ii) of such Act is amended by striking "local departments of transportation" and inserting "the Department of Transportation".

(h) FUNDAMENTAL PROPERTIES OF ASPHALTS AND MODIFIED ASPHALTS.—Section 5117(b)(5)(B) of such Act is amended—

(1) by striking "1999" and inserting "1998"; and

(2) by striking "\$3,000,000 per fiscal year" and inserting "\$1,000,000 for fiscal year 1998 and \$3,000,000 for each of fiscal years 1999 through 2003".

SEC. 9012. AUTOMOBILE SAFETY AND INFORMATION.

(a) REFERENCE.—Section 7104 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(c) CONFORMING AMENDMENT.—Section 30105(a) of title 49, United States Code (as amended by subsection (a) of this section), is amended by inserting after 'Secretary' the following: 'for the National Highway Traffic Safety Administration'."

(b) CLEAN VESSEL ACT FUNDING.—Section 7403 of such Act is amended—

(1) by inserting "(a) IN GENERAL.—" before "Section 4(b)"; and

(2) by adding at the end the following:

"(b) TECHNICAL AMENDMENT.—Section 4(b)(3)(B) of the 1950 Act (as amended by subsection (a) of this section) is amended by striking '6404(d)' and inserting '7404(d)'. "

(c) BOATING INFRASTRUCTURE.—Section 7404(b) of such Act is amended by striking "6402" and inserting "7402".

SEC. 9013. TECHNICAL CORRECTIONS REGARDING SUBTITLE A OF TITLE VIII.

(a) AMENDMENT TO OFFSETTING ADJUSTMENT FOR DISCRETIONARY SPENDING LIMIT.—Section 8101(b) of the Transportation Equity Act for the 21st Century is amended—

(1) in paragraph (1) by striking "\$25,173,000,000" and inserting "\$25,144,000,000"; and

(2) in paragraph (2) by striking "\$26,045,000,000" and inserting "\$26,009,000,000".

(b) AMENDMENTS FOR HIGHWAY CATEGORY.—Section 8101 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(f) TECHNICAL AMENDMENTS.—Section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by subsection (c) of this Act) is amended—

"(1) by striking 'Century and' and inserting 'Century or';

"(2) by striking 'as amended by this section,' and inserting 'as amended by the Transportation Equity Act for the 21st Century.'; and

"(3) by adding at the end the following new flush sentence:

'Such term also refers to the Washington Metropolitan Transit Authority account (69-1128-0-1-401) only for fiscal year 1999 only for appropriations provided pursuant to authorizations contained in section 14 of Public Law 96-184 and Public Law 101-551.'."

(c) TECHNICAL AMENDMENT.—Section 8102 of the Transportation Equity Act for the 21st Century is amended by inserting before the period at the end the following: 'or from section 1102 of this Act'.

SEC. 9014. CORRECTIONS TO VETERANS SUBTITLE.

(a) TOBACCO-RELATED ILLNESSES IN VETERANS.—Section 8202 of the Transportation Equity Act for the 21st Century is amended to read as follows (and the amendments made by that section as originally enacted shall be treated for all purposes as not having been made):

"SEC. 8202. TREATMENT OF TOBACCO-RELATED ILLNESSES OF VETERANS.

"(a) IN GENERAL.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:

'§1103. Special provisions relating to claims based upon effects of tobacco products

(a) Notwithstanding any other provision of law, a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.

(b) Nothing in subsection (a) shall be construed as precluding the establishment of service connection for disability or death from a disease or injury which is otherwise shown to have been incurred or aggravated in active military, naval, or air service or which became manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of this title."

"(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:

'1103. Special provisions relating to claims based upon effects of tobacco products.'

"(b) EFFECTIVE DATE.—Section 1103 of title 38, United States Code, as added by subsection (a), shall apply with respect to claims received by the Secretary of Veterans Affairs after the date of the enactment of this Act."

(b) GI BILL EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS OF VETERANS.—Subtitle B of title VIII of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new section:

"SEC. 8210. TWENTY PERCENT INCREASE IN RATES OF SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.

"(a) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.—Section 3532 of title 38, United States Code, is amended—

"(1) in subsection (a)(1)—

"(A) by striking out '§404' and inserting in lieu thereof '§485';

"(B) by striking out '§304' and inserting in lieu thereof '§365'; and

"(C) by striking out '§202' and inserting in lieu thereof '§242';

"(2) in subsection (a)(2), by striking out '§404' and inserting in lieu thereof '§485';

"(3) in subsection (b), by striking out '§404' and inserting in lieu thereof '§485'; and

"(4) in subsection (c)(2)—

"(A) by striking out '§327' and inserting in lieu thereof '§392';

"(B) by striking out '§245' and inserting in lieu thereof '§294'; and

"(C) by striking out '§163' and inserting in lieu thereof '§196'.

"(b) CORRESPONDENCE COURSE.—Section 3534(b) of such title is amended by striking out '§404' and inserting in lieu thereof '§485'.

“(c) SPECIAL RESTORATIVE TRAINING.—Section 3542(a) of such title is amended—

“(1) by striking out ‘\$404’ and inserting in lieu thereof ‘\$485’;

“(2) by striking out ‘\$127’ each place it appears and inserting in lieu thereof ‘\$152’; and

“(3) by striking out ‘\$13.46’ and inserting in lieu thereof ‘\$16.16’.

“(d) APPRENTICESHIP TRAINING.—Section 3687(b)(2) of such title is amended—

“(1) by striking out ‘\$294’ and inserting in lieu thereof ‘\$353’;

“(2) by striking out ‘\$220’ and inserting in lieu thereof ‘\$264’;

“(3) by striking out ‘\$146’ and inserting in lieu thereof ‘\$175’; and

“(4) by striking out ‘\$73’ and inserting in lieu thereof ‘\$88’.

“(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1998, and shall apply with respect to educational assistance allowances paid for months after September 1998.”.

SEC. 9015. TECHNICAL CORRECTIONS REGARDING TITLE IX.

(a) HIGHWAY TRUST FUND.—Subsection (f) of section 9002 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new paragraphs:

“(4) The last sentence of section 9503(c)(1), as amended by subsection (d), is amended by striking ‘the date of enactment of the Transportation Equity Act for the 21st Century’ and inserting ‘the date of the enactment of the TEA 21 Restoration Act’.

“(5) Paragraph (3) of section 9503(e), as amended by subsection (d), is amended by striking ‘the date of enactment of the Transportation Equity Act for the 21st Century’ and inserting ‘the date of the enactment of the TEA 21 Restoration Act’.”.

(b) BOAT SAFETY ACCOUNT AND SPORT FISH RESTORATION ACCOUNT.—Section 9005 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new subsection:

“(f) CLERICAL AMENDMENTS.—

“(1) Subparagraph (A) of section 9504(b)(2), as amended by subsection (b)(1), is amended by striking ‘the date of the enactment of the Transportation Equity Act for the 21st Century’ and inserting ‘the date of the enactment of the TEA 21 Restoration Act’.

“(2) Subparagraph (B) of section 9504(b)(2), as added by subsection (b)(3), is amended by striking ‘such Act’ and inserting ‘the TEA 21 Restoration Act’.

“(3) Subparagraph (C) of section 9504(b)(2), as amended by subsection (b)(2) and redesignated by subsection (b)(3), is amended by striking ‘the date of the enactment of the Transportation Equity Act for the 21st Century’ and inserting ‘the date of the enactment of the TEA 21 Restoration Act’.

“(4) Subsection (c) of section 9504, as amended by subsection (c)(2), is amended by striking ‘the date of enactment of the Transportation Equity Act for the 21st Century’ and inserting ‘the date of the enactment of the TEA 21 Restoration Act’.”.

SEC. 9016. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect simultaneously with the enactment of the Transportation Equity Act for the 21st Century. For purposes of all Federal laws, the amendments made by this title shall be treated as being included in the Transportation Equity Act for the 21st Century at the time of the enactment of such Act, and the provisions of such Act (including the amendments made by such Act) (as in effect on the day before the date of enactment of this Act) that are amended by this title shall be treated as not being enacted.

And the Senate agree to the same.

BILL ARCHER,
NANCY L. JOHNSON,

ROB PORTMAN,
CHARLES B. RANGEL,
WILLIAM J. COYNE,

Managers on the Part of the House.

BILL ROTH,
JOHN H. CHAFFEE,
CHUCK GRASSLEY,
ORRIN HATCH,
FRANK H. MURKOWSKI,
DON NICKLES,
PHIL GRAMM,
DANIEL P. MOYNIHAN,
MAX BAUCUS,
BOB GRAHAM,
JOHN BREAUX,
BOB KERREY,

From the Committee on Governmental Affairs:

FRED THOMPSON,
SAM BROWNBACK,
THAD COCHRAN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TITLE I. REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE IRS

A. IRS Restructuring and Creation of IRS Oversight Board

1. IRS mission and restructuring (secs. 1001 and 1002 of the Senate amendment)

Present Law

IRS mission statement

The IRS mission statement provides that: The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity and fairness.

IRS organizational plan

Under Reorganization Plan No. 1 of 1952, the Internal Revenue Service (“IRS”) is organized into a 3-tier geographic structure with a multi-functional National Office, Regional Offices, and District Offices. A number of IRS reorganizations have occurred since then, but no major changes have been made to the basic 3-tier structure. Currently, as a result of a 1995 reorganization, there is a Regional Commissioner, a Regional Counsel and a Regional Director of Appeals for each of the following 4 regions: (1) the Northeast Region (headquartered in New York); (2) the Southeast Region (Atlanta); (3) the Midstates Region (Dallas); and (4) the West-ern Region (San Francisco). There are 33 District Offices, 10 service centers, and 3 computing centers.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the IRS is directed to revise its mission statement to provide greater emphasis on serving the public and meeting the needs of taxpayers.

The IRS Commissioner is directed to restructure the IRS by eliminating or substantially modifying the present-law three-tier geographic structure and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs. The plan is also required to ensure an independent appeals function within the IRS. As part of ensuring an independent appeals function, the reorganization plan is to prohibit ex parte communications between appeals officers and other IRS employees to the extent such communications appear to compromise the independence of the appeals officers. The legality of IRS actions will not be affected pending further appropriate statutory changes relating to such a reorganization (e.g., eliminating statutory references to obsolete positions).

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective on the date of enactment.

2. Establishment and duties of IRS Oversight Board (sec. 101 of the House bill and sec. 1101 of the Senate amendment)

Present Law

Under present law, the administration and enforcement of the internal revenue laws are performed by or under the supervision of the Secretary of the Treasury.¹ The Secretary has delegated the responsibility to administer and enforce the Internal Revenue laws to the Commissioner of Internal Revenue (“Commissioner”). The Commissioner has the final authority of the IRS concerning the substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda. The duties of the Chief Counsel of the IRS are prescribed by the Secretary. The Secretary has delegated authority over the Chief Counsel to the General Counsel of the Treasury. The General Counsel has delegated authority to serve as the legal adviser to the Commissioner to the Chief Counsel.

Federal employees are subject to rules designed to prevent conflicts of interest or the appearance of conflicts of interest. The rules applicable to any particular employee depend in part on whether the employee is a regular, full-time Federal Government employee or a special government employee, the length of service of the employee, and the pay grade of the employee. A “special government employee” is, in general, an officer or employee of the executive or legislative branch of the U.S. government who is appointed or employed to perform (with or without compensation), for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. Violations of the ethical conduct rules are generally punishable by imprisonment for up to 1 year (5 years in the case of willful misconduct), a civil fine, or both. The amount of the civil fine with respect to each violation cannot exceed the greater of \$50,000 or the compensation received by the employee in connection with the prohibited conduct.

¹ Code sec. 7801(a).

Under the ethical conduct rules, all Federal Government employees (including special government employees) are precluded from participating in a matter in which the employee (or a related party) has a financial interest. In addition, special government employees cannot represent a party (whether or not for compensation) or receive compensation for representation of a party in relation to a particular matter involving specific parties (1) in which the employee has at any time participated personally and substantially, or (2) which is pending in the department or agency of the Government in which the special government employee is serving. In the case of a special government employee who has served in a department no more than 60 days during the immediately preceding 365 days, item (2) does not apply.² Thus, for example, such an individual can receive compensation for representational services with respect to matters pending in the department in which the employee serves, as long as it is not a matter involving parties in which the employee personally and substantially participated.³

The conflict of interest rules also impose restrictions on what a Federal Government employee can do after leaving the Government. In general, senior level officers and employees (including special government employees) who served at least 60 days during the immediately preceding 1-year period cannot represent anyone other than the United States before the individual's former department or agency for 1 year after terminating employment. Whether an employee is a senior level officer or employee is determined by pay grade. The one-year post employment restriction does not apply to special government employees who serve less than 60 days during the immediately preceding 1-year period before termination of employment.⁴

Federal employees with pay grades (or pay rates) above certain levels (and who have at least 60 days of service) are required to file annually public financial disclosures.

House Bill

Duties, responsibilities, and powers of the IRS Oversight Board

General responsibilities of the Board

The House bill provides for the establishment within the Treasury Department of the

Internal Revenue Service Oversight Board (the "Board"). The general responsibilities of the Board are to oversee the Internal Revenue Service (the "IRS") in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws. The Board has no responsibilities or authority with respect to: (1) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws; (2) law enforcement activities of the IRS, including compliance activities such as criminal investigations, examinations, and collection activities;⁵ and (3) specific procurement activities of the IRS (e.g., selecting vendors or awarding contracts). The Board also has the authority to recommend candidates for IRS Commissioner to the President, and to recommend removal of the Commissioner.

Specific responsibilities of the Board

The Board has the following specific responsibilities: (1) to review and approve strategic plans of the IRS, including the establishment of mission and objectives (and standards of performance) and annual and long-range strategic plans; (2) to review the operational functions of the IRS, including plans for modernization of the tax system, outsourcing or managed competition, and training and education; (3) to provide for the review of the Commissioner's selection, evaluation and compensation of senior managers; and (4) to review and approve the Commissioner's plans for major reorganization of the IRS. It is intended that major reorganizations subject to the Board's review and approval are limited to major changes in organizational structure, such as the 1995 IRS reorganization that combined 7 regions into 4 and 63 districts into 33. In addition, the Board will review and approve the budget request of the IRS prepared by the Commissioner, submit such budget request to the Secretary, and ensure that the budget request supports the annual and long-range strategic plans of the IRS. The Secretary is required to submit the budget request approved by the Board to the President, who is required to submit such request, without revision, to the Congress together with the President's annual budget request for the IRS. The House bill does not affect the ability of the President to include, in addition, his own budget request relating to the IRS.

It is intended that the Board will reach a formal decision on all matters subject to its review. With respect to those matters over which the Board has approval authority, the Board's decisions are determinative. It is fully expected that, with respect to those matters over which the Board has approval authority (other than as relates to the development of the budget), the Secretary will exert his or her oversight responsibility over the IRS by working through and with the Board.⁶

The Board is required to report each year to the President and the Congress regarding the conduct of its responsibilities.

It is expected that the Treasury Department will no longer utilize the IRS Management Board once the new Board created by the bill is in place, as the functions of the IRS Management Board would be taken over by the new Board.

²This provision is not intended to limit the Board's authority with respect to the review and approval of strategic plans and the budget of the Commissioner or to preclude the Board from review of IRS operations generally.

³The budget is excepted from this expectation because the bill provides a separate mechanism through which the Secretary may act. The procedures relating to the Board permit the President to submit his own budget in addition to that approved by the Board.

Composition of the Board

The Board is composed of 11 members. Eight of the members are so-called "private-life" members who are not Federal officers or employees. These private-life members will be appointed by the President, with the advice and consent of the Senate. The remaining members are (1) the Secretary of the Treasury (or, if the Secretary so designates, the Deputy Secretary of the Treasury), (2) a representative from an organization representing a substantial number of IRS employees, who will be appointed by the President with the advice and consent of the Senate, and⁷ (3) the Commissioner of the IRS.

Qualifications of Board members

The private-life members of the Board are to be appointed based on their expertise in the following areas: management of large service organizations; customer service; the Federal tax laws, including administration and compliance; information technology; organization development; and the needs and concerns of taxpayers. In the aggregate, the members of the Board should collectively bring to bear expertise in all these enumerated areas.

Ethical standards for private-life members

Representational activities and compensation matters

The private-life members are considered special government employees during the entire period of their appointment. That is, they will be considered to be performing services as a special government employee on each day during their appointment, not just on those days on which they actually perform services. Thus, they will be subject to the ethical conduct rules applicable to special government employees who serve more than 60 days during any 365-day period. Thus, for example, private-life Board members would not be able to represent clients before the IRS on matters involving specific parties during their terms as Board members.

Post-employment restrictions

Private-life Board members are to be subject to the one-year post-employment restriction applicable to senior-level employees.

Financial disclosure reports

Private-life members are to be subject to the public financial disclosure rules generally applicable to special government employees above certain pay grades.

Administrative matters

Term of appointments

The 8 private-life Board members and the employee organization representative generally will be appointed for 5-year terms. The private-life members may serve no more than two 5-year terms. Each 5-year term begins upon appointment. Board member terms are staggered, as a result of a special rule providing that some private-life members first appointed to the Board will serve initial terms of less than 5 years. The members of the Board are to elect a chairperson from among the private-life Board members for a 2-year term. Any member of the Board can be removed at the will of the President. In addition, the Secretary of the Treasury (or, if so delegated, the Deputy Secretary) and the IRS Commissioner are removed from the Board upon termination of employment in such positions and the representative of IRS

⁷In appointing the employee organization representative, the President is not constrained to choose an individual recommended by an organization covering IRS employees, but may choose whoever the President determines to be an appropriate representative of the organization.

²The prohibition on receipt of compensation applies regardless of whether the services are performed by the Federal employee or someone else. For example, it would preclude a Federal employee from sharing in the compensation received by a partner of the Federal employee for representations on covered matters.

³More stringent rules apply to regular Federal Government employees. Such employees cannot receive compensation for representational services (whether rendered by the individual or another) in matters in which the United States is a party or has a direct and substantial interest before any department, agency or court. In addition, a Federal Government employee cannot act as agent or attorney (whether or not for compensation) for prosecuting any claim against the United States or act as agent or attorney for anyone before any department, agency, or court in which the United States is a party or has a direct and substantial interest.

⁴All Executive branch employees are permanently prohibited from representing a party other than the government in connection with a particular matter (1) in which the government is a party or has an interest, (2) in which the individual participated personally and substantially, and (3) which involved a specific party or parties at the time of their participation. In addition, Federal employees cannot, within 2 years after terminating employment, represent any person other than the United States in connection with any matter (1) in which the government is a party or has a direct and substantial interest, (2) which the person knows or reasonably should know was actually pending under his or her official responsibility within one year before termination of employment, and (3) which involved a specific party or parties at the time it was pending.

employees is removed from the Board upon termination of their employment, membership, or other affiliation with the organization representing IRS employees.

Meetings and quorum

The Board is required to meet at least once a month, and can meet at such other times as the Board determines appropriate. A quorum of 6 members is required in order for the Board to conduct business. Actions of the Board are taken by a majority vote of those members present and voting.

Staffing

The Board will not have its own permanent staff, but will have such staff as detailed by the Commissioner at the request of the Chair of the Board. The Chair can procure temporary and intermittent services under section 3109(b) of title 5 of the U.S. Code.

Compensation and travel expenses

The private-life members of the Board will be compensated at a rate not to exceed \$30,000 per year, except that the Chair will be compensated at a rate not to exceed \$50,000 a year. Other members of the Board will receive no compensation for their services as Board members. The members of the Board will be entitled to travel expenses for purposes of attending meetings of the Board.

Reports

The Board is required to report each year regarding the conduct of its responsibilities. The annual report shall be provided to the President and Congress.

Effective date

The House bill provisions are effective on the date of enactment. The President is directed to submit nominations for Board members to the Senate within 6 months of the date of enactment.

Senate Amendment

Duties, responsibilities, and powers of the IRS Oversight Board

General responsibilities of the Board

The Senate amendment generally follows the House bill, except that under the Senate amendment, the Board has no authority (1) to intervene in specific taxpayer cases, including compliance activities involving specific taxpayers such as criminal investigations, examinations, and collection activities, and (2) to intervene in specific individual personnel matters. The Board does have authority with respect to general law enforcement matters, and it has the responsibility to ensure that the organization and operation of the IRS allows it to carry out its mission.

Specific responsibilities of the Board

Under the Senate amendment, the Board's specific responsibilities and budget responsibilities are the same as in the House bill, except that: (1) the Board's review and approval authority for the Commissioner's plans for major reorganization does not apply to the reorganization provided in the Senate amendment; (2) the Board, after taking into account the recommendations, if any, of the Commissioner, shall recommend to the Secretary 3 candidates for appointment as the National Taxpayer Advocate from individuals who have a background in customer service and tax law, and experience representing individual taxpayers (and to recommend the removal of the National Taxpayer Advocate); (3) the Board shall review procedures of the IRS relating to financial audits; (4) the Board is to review operations of the IRS in order to ensure the proper treatment of taxpayers; and (5) in exercising its duties, the members of the Board shall maintain appropriate confidentiality (e.g., regarding enforcement matters).

Composition of the Board

Under the Senate amendment, the Board is composed of 9 members. Six of the members are so-called "private-life" members who are not otherwise Federal officers or employees. These private-life members are appointed by the President, with the advice and consent of the Senate. The other members are: (1) the Secretary (or, if the Secretary so designates, the Deputy Secretary); (2) the Commissioner; and (3) a representative from an employee organization that represents a substantial number of IRS employees and who is appointed by the President, with the advice and consent of the Senate. In appointing the representative of an employee organization, the President is not required to choose an individual recommended by the employee organization, but may choose whoever the President determines to be an appropriate representative of the employee organization.

Section 6103 authority

Under the Senate amendment, Board members would have limited access to confidential tax return and return information under section 6103. This limited access would permit the Board to receive such information (i.e., information that has not been redacted to remove confidential tax return and return information) from the Treasury IG for Tax Administration or the Commissioner in connection with reports to the Board. This access to section 6103 information does not include the taxpayer's name, address, or taxpayer or employer identification number. The Board members are subject to the anti-browsing rules applicable to IRS employees under present law.⁸

Qualifications of Board members

Under the Senate amendment, the private-life members of the Board will be appointed without regard to political affiliation, and based solely on their expertise in the same areas as the House bill, except that the Senate amendment adds the further qualification that a private-life member have experience and expertise in the needs and concerns of small business.

Ethical standards for private-life members

Representational activities and compensation matters

Under the Senate amendment, the ethical conduct rules applicable to private-life Board members depend on whether or not such members are determined to be "special government employees" under current law. It is expected that they generally will be.⁹ In that case, they will be subject, at a minimum, to the ethical conduct rules applicable to special government employees. In addition, during their term as a Board member, a private-life Board member cannot represent any party (whether or not for compensation) with respect to (1) any matter before the Board or the IRS, (2) any tax-related matter before the Treasury Department, or (3) any court proceeding with respect to a matter described in (1) or (2). Thus, for example, the day after appointment to the Board, a private-life Board member could not meet with representatives of the IRS or Treasury on behalf of a client or the Board member's corporate employer with respect to proposed tax regulations. On the other hand, the Board member could, for example, represent clients before the U.S. Customs Service. The

⁸The provision does not affect the Secretary's (or Deputy Secretary's) or the Commissioner's access to section 6103 information or the application of the anti-browsing rules to the Secretary (or Deputy Secretary) or the Commissioner.

⁹If the Board members are determined not to be special government employees under the present-law rules, then they will be subject to the ethical conduct rules relating to regular Federal Government employees.

special rules applicable to private-life Board members generally do not preclude the Board member from sharing in compensation from representation of clients by another person (e.g., a partner of the Board member) before the IRS or Treasury.¹⁰

Post-employment restrictions

Under the Senate amendment, private-life Board members are subject to the 1-year post employment restriction applicable to individuals above certain pay grades and who have served at least 60 days (whether or not the members are special government employees under the present-law rules).

Financial disclosure reports

Under the Senate amendment, the private-life Board members are subject to the public financial disclosure rules applicable to Federal Government employees above certain pay grades and who have at least 60 days of service. Thus, the private-life Board members are required to file a public financial disclosure report for purposes of confirmation, annually during their tenure on the Board, and upon termination of appointment.

Ethical standards for IRS employee organization representative

Waiver of conflict-of-interest laws

The Senate amendment provides that the IRS employee organization representative is subject to the same ethical conduct rules as the private-life Board members. However, the Senate amendment modifies the otherwise applicable ethical conduct rules so that they do not preclude the employee representative from carrying out his or her duties as a Board member and his or her duties with respect to the employee organization. In particular, the employee representative is not prohibited from (1) representing the interests of the employee organization before the Federal Government on any matter, or (2) acting on a Board matter because the employee organization has a financial interest in the matter. In addition, the employee representative can continue to receive his or her compensation from the employee organization.¹¹

Post-employment restrictions

The employee representative is subject to the same 1-year post employment restriction applicable to the private-life Board members, except to the extent the representative is acting in his capacity as a representative of the employee organization.

Financial disclosure reports

The employee representative is subject to the same public financial disclosure rules as the private-life Board members. In addition, the employee organization is required to provide an annual financial report with the House Ways and Means Committee and the Senate Finance Committee. Such report is required to include the compensation paid to the individual serving on the Board, the compensation of individuals employed by the employee organization, and membership dues collected by the organization.

Administrative matters

Term of appointments

The 6 private-life Board members will be appointed for 5-year terms. The private-life

¹⁰Certain limitations to this exception to the otherwise applicable ethical rules would apply. For example, this exception would not apply if the matter was one in which the Board member personally and substantially participated. Similarly, the Board member could not act with respect to a matter in which he or she has a personal financial interest, including the potential to receive a share in compensation as a result of another's representation.

¹¹Certain limitations on this exception would apply. For example, the rules relating to bribery would continue to apply. In addition, the employee representative would be precluded from acting on a matter in which he or she has a financial interest.

members may serve no more than two 5-year terms. Board member terms will be staggered, as a result of a special rule providing that some private-life members first appointed to the Board would serve terms of less than 5 years. Under this rule, 2 members first appointed will have a term of 2 years, 2 for a term of 4 years, and 2 for a term of 5 years. The terms of the initial Board members will run from the date of appointment. Subsequent terms will run from expiration of the previous term. A Board member appointed to fill a vacancy before the expiration of a term will be appointed to the remainder of the term. Such a member could be appointed to a subsequent 5-year term.

A private-life Board member and the IRS employee representative Board member may be removed at the will of the President. In addition, the Secretary (or Deputy Secretary) and the IRS Commissioner are automatically removed from the Board upon his or her termination of employment as such.

Chair of the Board

The members of the Board are to elect a Chair from the private-life members for a 2-year term. Except as otherwise provided by a majority of the Board, the authority of the Chair includes the authority to hire appropriate staff, call meetings, establish committees, establish the agenda for meetings, and develop rules for the conduct of business.

Meetings and quorum

Under the Senate amendment, the Board is required to meet on a regular basis (as determined necessary by the Chair), but no less frequently than quarterly. The Board can meet privately, and is not subject to public disclosure laws. A quorum of 5 members is required in order for the Board to conduct business. Actions of the Board can be taken by a majority vote of those members present and voting.

Staffing

Under the Senate amendment, the Chair is authorized to hire (and terminate) such personnel as the Chair finds necessary to enable the Board to carry out its duties. In addition, the Board will have such staff as detailed by the Commissioner or from another Federal agency at the request of the Chair of the Board. The Chair can procure temporary and intermittent services under section 3109(b) of title 5 of the U.S. Code.

Compensation and travel expenses

Under the Senate amendment, the private-life members of the Board will be compensated at a rate of \$30,000 per year, except that the Chair will be compensated at a rate of \$50,000 a year. The other Board members will receive no compensation for their services as a Board member. In addition, members of the Board are entitled to travel expenses for purposes of attending Board meetings or other duties as a member of the Board.

Reports

Under the Senate amendment, the Board is required to report each year regarding the conduct of its responsibilities. The annual report shall be provided to the President and the House Committees on Ways and Means, Government Reform and Oversight, and Appropriations and the Senate Committees on Finance, Governmental Affairs, and Appropriations. In addition, the Board is required to report to the Ways and Means and Finance Committees if the IRS does not address problems identified by the Board.

Effective date

The provision is effective on the date of enactment. The President is directed to submit nominations for Board members to the Senate within 6 months of the date of enactment. The legality of the actions of the IRS

are not affected pending appointment of the Board. Under the Senate amendment, the Board will sunset September 30, 2008.

Conference Agreement Duties, responsibilities, and powers of the IRS Oversight Board

General responsibilities of the Board

The conference agreement follows the Senate amendment.

Specific responsibilities of the Board

Under the conference agreement, the specific responsibilities of the Board are the same as under the Senate amendment, except that they do not include the responsibility (1) to recommend to the Secretary (taking into account the recommendations, if any, of the Commissioner) 3 candidates for appointment as the National Taxpayer Advocate; or (2) to review procedures of the IRS relating to financial audits. However, the conferees intend that the Chairman of the Board will consider establishing a financial management subcommittee.

Consistent with the Board's responsibility to review and approve plans for major reorganizations, the conferees intend for the Board to have the authority to review and approve the reorganization plan that is contained in Title I of this legislation. However, to the extent that the Commissioner has already taken measures to develop and implement such a plan, the conferees do not want to impede such efforts. Thus, the conferees do not intend in any way that the Commissioner should be precluded from moving ahead with such planning and implementation prior to the appointment of the Board.

Composition of the Board

The conference agreement follows the Senate amendment, except that in lieu of a Board member who is a representative of an organization that represents a substantial number of IRS employees, the conference agreement provides for an individual who is a full-time Federal employee or a representative of employees ("employee representative").

Section 6103 authority

The conference agreement follows the Senate amendment.

Qualifications of Board members

The conference agreement follows the Senate amendment.

Ethical standards for private-life members

The conference agreement follows the Senate amendment with respect to the application of the ethics rules to the private-life Board members regarding representational activities and compensation matters, post-employment restrictions, and financial disclosure requirements.

Ethical standards for employee representative

Under the conference agreement, the same ethics rules applicable to the private-life members regarding the representational activities and compensation matters apply to the employee representative if the individual is a special Government employee (i.e., the individual is not already an officer or employee of the Federal Government). In addition, the same post-employment restrictions and the financial disclosure requirements applicable to the private-life members apply to the employee representative. The conference agreement does not include the Senate amendment requirement for filing annual financial reports that applies to the organization representing a substantial number of IRS employees, a representative of which is a Board member.

The conference agreement does not include the Senate amendment provision for waiver of the conflict-of-interest laws. Instead, the conference agreement grants the President

the authority to waive, at the time the President nominates the employee representative to the Board, for the term of the member, any appropriate provisions of chapter 11 of title 18 of the United States Code, to the extent such waiver is necessary to allow such member to participate in the decisions of the Board while continuing to serve as an employee representative. Any such waiver is not effective unless a written intent of waiver to exempt the member (and the actual waiver language) is submitted to the Senate with the nomination of the member. It is not intended that waiver of the restrictions on post-employment provided under the conference agreement be necessary to allow such member to participate in the decisions of the Board while continuing to serve as an employee representative.

Administrative matters

Term of appointments

The conference agreement follows the Senate amendment, with modifications. First, the staggered term of the initial Board shall be as follows: 2 members first appointed will have a term of 3 years, 2 members shall have a term of 4 years, and 2 members shall have a term of 5 years. In addition, the limitation of the Senate amendment that private-life members may serve no more than two five-year terms also applies to the employee representative under the conference agreement.

Chair of the Board

The conference agreement follows the Senate amendment.

Meetings and quorum

The conference agreement follows the Senate amendment.

Staffing

The conference agreement follows the Senate amendment. However, the conferees intend that the size of the staff be limited to a small number, and the Board is encouraged to use outside consultants whenever necessary.

Compensation and travel expenses

The conference agreement follows the Senate amendment with respect to compensation of Board members, with a modification. The employee representative member of the Board will be compensated at a rate of \$30,000 per year unless the individual is already an officer or employee of the Federal Government.

The conference agreement follows the House bill provision on travel expenses, with a modification. Travel expenses other than those incurred to attend Board meetings are allowed if approved in advance by the Chair, and the Board shall report annually to Congress the amount of travel expenditures incurred by the Board.

Reports

The conference agreement follows the Senate amendment, with a modification providing that the Board is to include in its annual report information on travel expenses allowed.

Effective date

The conference agreement follows the House bill. The conference agreement does not include the Senate amendment provision for termination of the Board on September 30, 2008. The conference agreement provides that the provisions relating to the Board are not to be construed to invalidate the actions and authority of the IRS prior to the appointment of members of the Board.

B. Appointment and Duties of IRS Commissioner and Chief Counsel and Other Personnel

1. IRS Commissioner and other personnel (secs. 102 and 103 of the House bill and secs. 1102(a) and 1104 of the Senate amendment)

Present Law

Within the Department of the Treasury is a Commissioner of Internal Revenue ("Commissioner"), who is appointed by the President, with the advice and consent of the Senate. The Commissioner has such duties and powers as may be prescribed by the Secretary.¹² The Secretary has delegated to the Commissioner the administration and enforcement of the internal revenue laws.¹³ The Commissioner generally does not have authority with respect to tax policy matters.¹⁴

The Secretary is authorized to employ such persons as the Secretary deems appropriate for the administration and enforcement of the internal revenue laws and to assign posts of duty.

House Bill

As under present law, the House bill provides that Commissioner will be appointed by the President, with the advice and consent of the Senate, and can be removed at will by the President. The Commissioner will be appointed to a 5-year term, beginning with the date of appointment. The Board has the power to recommend candidates to the President for Commissioner. The Board has the authority to recommend the removal of the Commissioner. Although the President is not required to nominate for Commissioner a candidate recommended by the Board (or to remove a Commissioner when the Board so recommends), it is expected that the President will generally give deference to the Board's expertise and familiarly with the needs and functions of the IRS and will act in accordance with the Board's recommendations.

The Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). It is intended that the listed duties codify present delegations. However, if the Secretary changes such orders, they may be subject to the notice requirement of the bill, described below.

If the Secretary determines not to delegate the specified duties to the Commissioner, such determination will not take effect until 30 days after the Secretary notifies the House Committees on Ways and Means, Government Reform and Oversight, and Appropriations, the Senate Committees on Finance, Government Operations, and Appropriations, and the Joint Committee on Taxation.

This provision is not intended to alter the Secretary's existing authority to delegate to agencies other than the IRS the authority to administer and enforce certain portions of

the internal revenue laws. For example, the Secretary currently has delegated to the Bureau of Alcohol, Tobacco and Firearms the authority to administer and enforce the taxes under section 4181 and chapters 51, 52, and 53 of the Internal Revenue Code (regarding excise and other taxes on alcohol, tobacco, firearms, and destructive devices).

The Commissioner is to consult with the Board on all matters within the Board's authority (other than the recommendation of candidates for Commissioner and the recommendation to remove the Commissioner). With respect to those matters within the Board's approval authority (other than with respect to the development of the budget), it is fully expected that the Secretary will exert his or her oversight responsibility over the IRS by working through and with the Board.¹⁵

Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and would be required to issue all necessary directions, instructions, orders, and rules applicable to such persons. Unless otherwise provided by the Secretary, the Commissioner will determine and designate the posts of duty.

The Commissioner is compensated as under present law.

Effective date.—The provisions of the House bill relating to the Commissioner generally are effective on the date of enactment. The provision relating to the 5-year term of office applies to the Commissioner in office on the date of enactment. This 5-year term runs from the date of appointment.

Senate Amendment

As under present law, the Senate amendment provides that the Commissioner is appointed by the President, with the advice and consent of the Senate, and may be removed at will by the President. Under the provision, one of the qualifications of the Commissioner is demonstrated ability in management. The Commissioner is appointed to a 5-year term, beginning with the date of appointment. The Commissioner may be reappointed for more than one 5-year term. The Board recommends candidates to the President for the position of Commissioner; however, the President is not required to nominate for Commissioner a candidate recommended by the Board. The Board has the authority to recommend the removal of the Commissioner.

The Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, to exercise the IRS' final authority concerning the substantive interpretation of the tax laws, to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel), and to recommend candidates for the position of National Taxpayer Advocate to the IRS Board. If the Secretary determines not to delegate such specified duties to the Commissioner, such determination will not take effect until 30 days after the Secretary notifies the House Committees on Ways and Means, Government Reform and Oversight, and Appropriations, and the Senate Committees on Finance, Governmental Affairs, and Appropriations. The Commissioner is to con-

sult with the Board on all matters within the Board's authority (other than the recommendation of candidates for Commissioner and the recommendation to remove the Commissioner).

Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons. Unless otherwise provided by the Secretary, the Commissioner will determine and designate the posts of duty.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification. Instead of the Senate amendment provision relating to the duty of the Commissioner to recommend candidates for the position of National Taxpayer Advocate to the IRS Board, the conference agreement provides that the Treasury Secretary is to consult with the Commissioner and the Board before selecting the National Taxpayer Advocate.

Effective date.—The conference agreement follows the Senate amendment and the House bill.

2. IRS Chief Counsel (sec. 1102(a) of the Senate amendment)

Present Law

The President is authorized to appoint, by and with the consent of the Senate, an Assistant General Counsel of the Treasury, who is the Chief Counsel of the IRS. The Chief Counsel is the chief law officer for the IRS and has such duties as may be prescribed by the Secretary. The Secretary has delegated authority over the Chief Counsel to the Treasury General Counsel. The Chief Counsel does not report to the Commissioner, but to the Treasury General Counsel. As delegated by the Treasury General Counsel, the duties of the Chief Counsel include: (1) to be the legal advisor to the Commissioner and his or her officers and employees; (2) to furnish such legal opinions as may be required in the preparation and review of rulings and memoranda of technical advice and the performance of other duties delegated to the Chief Counsel; (3) to prepare, review, or assist in the preparation of proposed legislation, treaties, regulations and Executive Orders relating to laws affecting the IRS; (4) to represent the Commissioner in cases before the Tax Court; (5) to determine what civil actions should be brought in the courts under the laws affecting the IRS and to prepare recommendations to the Department of Justice for the commencement of such actions and to authorize or sanction commencement of such actions.

House Bill

No provision.

Senate Amendment

As under present law, the Senate amendment provides that the Chief Counsel is appointed by the President, with the advice and consent of the Senate. Under the Senate amendment, the Chief Counsel is not an Assistant General Counsel of the Treasury and reports directly to the Commissioner.

The Chief Counsel has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, these duties include the duties currently delegated to the Chief Counsel as described above. If the Secretary determined not to delegate such specified duties to the Chief Counsel, such determination is subject to the same notice requirement applicable to changes in the delegation of authority with respect to the Commissioner.

¹² Code sec. 7802(a).

¹³ Treasury Order 150-10 (April 22, 1982).

¹⁴ See, e.g., Treasury Order 111-2 (March 16, 1981), which delegates to the Assistant Secretary (Tax Policy) the exclusive authority to make the final determination of the Treasury Department's position with respect to issues of tax policy arising in connection with regulations, published Revenue Rulings and Revenue Procedures, and tax return forms and to determine the time, form and manner for the public communication of such position.

¹⁵ The budget is excepted from this expectation because the House bill provides a separate mechanism through which the Secretary may act.

Effective date.—The provision is generally effective on the date of enactment. The provision providing that the Chief Counsel reports directly to the Commissioner is effective 90 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the Chief Counsel is to report directly to the Commissioner, with two exceptions.

First, the Chief Counsel is to report to both the Commissioner and the General Counsel of the Treasury Department with respect to (1) legal advice or interpretation of the tax law not relating solely to tax policy, and (2) tax litigation. Under this rule, the conferees intend that the Chief Counsel's dual reporting to the Commissioner and to the General Counsel include reporting with respect to legal advice or interpretation of the tax law set forth in regulations, revenue rulings and revenue procedures, technical advice and other similar memoranda, private letter rulings, and published guidance not described in the foregoing.

Second, the Chief Counsel is to report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy. Under this rule, the conferees intend that the Chief Counsel's reporting to the General Counsel include proposed legislation and international tax treaties.

The conference agreement provides that if there is any disagreement between the Commissioner and the General Counsel with respect to any matter on which the Chief Counsel has dual reporting to both the Commissioner and the General Counsel, the matter is to be submitted to the Secretary or the Deputy Secretary of the Treasury for resolution.

The conferees intend that under the general rule, the Chief Counsel's reporting directly to the Commissioner include reporting with respect to budget, organizational structure and reorganizations, mission and strategic plans. In addition, the conferees intend that the Chief Counsel's reporting directly to the Commissioner include reporting with respect to all matters relating to the day-to-day operations of the IRS, such as management of the IRS and procurement.

The conference agreement provides that all personnel in the Office of the Chief Counsel are to report to the Chief Counsel (and not to any person at the IRS or elsewhere within the Treasury Department).

C. Structure and Funding of the Employee Plans and Exempt Organizations Division ("EP/EO") (sec. 1102 of the House bill and sec. 1101 of the Senate amendment)

Present Law

Prior to 1974, no one specific office in the IRS had primary responsibility for employee plans and tax-exempt organizations. As part of the reforms contained in the Employee Retirement Income Security Act of 1974 ("ERISA"), Congress statutorily created the Office of Employee Plans and Exempt Organizations ("EP/EO") under the direction of an Assistant Commissioner.¹⁶ EP/EO was created to oversee deferred compensation plans governed by sections 401-414 of the Code and organizations exempt from tax under Code section 501(a).

In general, EP/EO was established in response to concern about the level of IRS resources devoted to oversight of employee plans and exempt organizations. The legislative history of Code section 7802(b) states that, with respect to administration of laws relating to employee plans and exempt organizations, "the natural tendency is for the

Service to emphasize those areas that produce revenue rather than those areas primarily concerned with maintaining the integrity and carrying out the purposes of exemption provisions."¹⁷

To provide funding for the new EP/EO office, ERISA authorized the appropriation of an amount equal to the sum of the section 4940 excise tax on investment income of private foundations (assuming a rate of 2 percent) as would have been collected during the second preceding year plus the greater of the same amount or \$30 million.¹⁸ However, amounts raised by the section 4940 excise tax have never been dedicated to the administration of EP/EO, but are transferred instead to general revenues. Thus, the level of EP/EO funding, like that of the rest of the IRS, is dependent on annual Congressional appropriations to the Treasury Department.

House Bill

The House bill retains the Office of Employee Plans and Exempt Organizations under the supervision and direction of an Assistant Commissioner of the Internal Revenue. As under present law, EP/EO is responsible for carrying out functions and duties associated with organizations designed to be exempt from tax under section 501(a) of the Code and with respect to plans designed to be qualified under section 401(a). In addition, however, EP/EO's responsibilities are expanded to include nonqualified deferred compensation arrangements. The House bill also provides that the Assistant Commissioner shall report annually to the Commissioner on EP/EO operations.

In addition, the House bill repeals the funding mechanism for EP/EO set forth in section 7802(b). Thus, the appropriate level of funding for EP/EO is, consistent with current practice, subject to annual Congressional appropriations, as are other functions within the IRS.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment eliminates the statutory requirement contained in section 7802(b) that there be an "Office of Employee Plans and Exempt Organizations" under the supervision and direction of an Assistant Commissioner. The legislative history expresses the Committee's intent that a comparable structure be created administratively to ensure that adequate resources within the IRS are devoted to oversight of the tax-exempt sector.

In addition, like the House bill, the Senate amendment repeals the funding mechanism for EP/EO set forth in section 7802(b).¹⁹

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

¹⁷S. Rept. 93-383, 108 (1973). See also H. Rept. 93-807, 104 (1974).

¹⁸Code section 7802(b)(2).

¹⁹The legislative history of the provision states that it is not intended that the elimination of the statutory requirement contained in section 7802(b)(1) of the self-funding mechanism described in section 7802(b)(2) impede the implementation of certain self-correction programs and EP/EO's other programs and activities. Rather, the legislative history indicates that, given the magnitude of the sector EP/EO is charged with regulating, as well as the unique nature of its mandate, an adequately funded EP/EO is extremely important to the fair and efficient administration of the Federal tax system.

D. Taxpayer Advocate and Taxpayer Assistance Orders (secs. 102 and 342 of the House bill and secs. 1102(a), (c), and (d) of the Senate amendment)

Present Law

Taxpayer Advocate

In 1996, the Taxpayer Bill of Rights 2 ("TBOR 2") established the position of Taxpayer Advocate, which replaced the position of Taxpayer Ombudsman, created in 1979 by the IRS. The Taxpayer Advocate is appointed by and reports directly to the IRS Commissioner.

TBOR 2 also created the Office of the Taxpayer Advocate. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

Taxpayer assistance orders

Taxpayers can request that the Taxpayer Advocate issue a taxpayer assistance order ("TAO") if the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered. A TAO may require the IRS to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer.

Under present law, the direct point of contact for taxpayers seeking taxpayer assistance orders is a problem resolution officer appointed by a District Director or a Regional Director of Appeals. The Taxpayer Advocate has designated the authority to issue taxpayer assistance orders to the local and regional problem resolution officers.

Reports of the Taxpayer Advocate

The Taxpayer Advocate is required to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the objectives of the Taxpayer Advocate for the up-coming fiscal year. This report is required to be provided no later than June 30 of each calendar year and is to contain full and substantive analysis, in addition to statistical information.

The Taxpayer Advocate is also required to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the activities of the Taxpayer Advocate during the most recently ended fiscal year. This report is required to be provided no later than December 31 of each calendar year, and is to contain full and substantive analysis, in addition to statistical information. This report is also required to: (1) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and IRS responsiveness; (2) contain recommendations received from individuals with the authority to issue TAOs; (3) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems; (4) contain an inventory of the items described in (1), (2), and (3) for which action has been taken and the result of such action; (5) contain an inventory of the items described in (1), (2), and (3) for which action remains to be completed and the period during which each item has remained on such inventory; (6) contain an inventory of the items described in (1), (2) and (3) for which no action has been taken, the period during which the item has remained on the inventory, the reasons for the inaction, and identify any

¹⁶Code section 7802(b).

IRS official who is responsible for the inaction; (7) identify any TAO that was not honored by the IRS in a timely manner; (8) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers; (9) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and (10) include such other information as the Taxpayer Advocate deems advisable.

The reports of the Taxpayer Advocate are to be submitted directly to the Congressional Committees without prior review or comment from the Commissioner, Secretary, any other officer or employee of the Treasury, or the Office of Management and Budget.

House Bill

The House bill requires the Commissioner to obtain the approval of the IRS Oversight Board on the selection of the Taxpayer Advocate. A candidate for the Taxpayer Advocate must have either substantial experience representing taxpayers before the IRS or have substantial experience within the IRS. If the prospective Taxpayer Advocate was an officer or an employee of the IRS before being appointed as the Taxpayer Advocate, the individual is required to agree not to accept any employment with the IRS for at least 5 years after ceasing to be the Taxpayer Advocate.

The House bill modifies the information to be included in the December 31 report to the tax-writing committees. The report no longer needs to include information about the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers. The report identifies areas of the tax law that impose significant compliance burdens on taxpayers or the IRS, including specific recommendations for solving these problems. The Taxpayer Advocate also is required to work in conjunction with the National Director of Appeals to identify the 10 most litigated issues for each category of taxpayers, and include the list of issues and recommendations for mitigating such disputes in the report. Categories of taxpayers include, for example, individuals, self-employed individuals, small businesses, etc.

As under present law, the reports are submitted directly to the tax-writing committees, without review by the IRS Oversight Board, the Secretary of the Treasury, or any other officer or employee of the Department of the Treasury or the Office of Management and Budget.

In addition, the House bill imposes new responsibilities on the Taxpayer Advocate. The Taxpayer Advocate is requested to monitor the coverage and geographical allocation of problem resolution officers and develop guidance that outlines criteria to be used by IRS employees in referring taxpayer inquiries to problem resolution officers. In connection with these responsibilities, it is anticipated that the Taxpayer Advocate will work with the IRS District Offices to ensure convenient taxpayer access to the local problem resolution officer. For example, the local telephone number for the problem resolution officer in each district should be published and available to taxpayers.

It is intended that the Taxpayer Advocate will work with the Commissioner in developing career paths for local problem resolution officers, so that individuals can progress through the General Schedule in the same manner as examination employees, without having to leave the problem resolution system. In that regard, it is contemplated that the compensation levels of local and regional problem resolution officers should be the

same as those of IRS personnel operating in other functional units. Under the current system, local problem resolution officers generally must return to an audit or collection function to achieve promotion. This lack of a career path within the problem resolution system reduces the independence of the system. It is contemplated that, to the extent feasible, regional problem resolution officers should be selected from the available pool of local problem resolution officers.

Effective date.—The House bill provision is effective on the date of enactment, except that the post-employment restrictions on the Taxpayer Advocate do not apply to an individual holding that position on the date of enactment.

Senate Amendment

National Taxpayer Advocate

The Senate amendment renames the Taxpayer Advocate the "National Taxpayer Advocate." The Senate amendment provides that the IRS Oversight Board is to recommend to the Secretary 3 candidates for National Taxpayer Advocate from among individuals with a background in customer service as well as tax law and with experience representing individual taxpayers. The Secretary is required to choose a National Taxpayer Advocate from among the individuals recommended by the Oversight Board. An individual may be appointed as the National Taxpayer Advocate only if the individual was not an officer or employee of the IRS during the 2-year period ending with such appointment and the individual agrees not to accept employment with the IRS for at least 5 years after ceasing to be the National Taxpayer Advocate.

The Senate amendment replaces the present-law problem resolution system with a system of local Taxpayer Advocates who report directly to the National Taxpayer Advocate and who will be employees of the Taxpayer Advocate's Office, independent from the IRS examination, collection, and appeals functions. The National Taxpayer Advocate has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate or any employee in the Office of the National Taxpayer Advocate. In conjunction with the Commissioner, the National Taxpayer Advocate is required to develop career paths for local Taxpayer Advocates.

The National Taxpayer Advocate is required to monitor the coverage and geographical allocation of the local Taxpayer Advocates, develop guidance to be distributed to all IRS officers and employees outlining the criteria for referral of taxpayer inquiries to local taxpayer advocates, ensure that the local telephone number for the local taxpayer advocate is published and available to taxpayers.

Each local Taxpayer Advocate may consult with the appropriate supervisory personnel of the IRS regarding the daily operation of the office of the Taxpayer Advocate. At the initial meeting with any taxpayer seeking the assistance of the Office of the Taxpayer Advocate, the local taxpayer advocate is required to notify the taxpayer that the Office operated independently of any other IRS office and reports directly to Congress through the National Taxpayer Advocate. At the discretion of the local taxpayer advocate, the advocate shall not disclose to the IRS any contact with or information provided by the taxpayer. Each local office of the Taxpayer Advocate is to maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

The IRS would be required to publish the taxpayer's right to contact the local Taxpayer Advocate on the statutory notice of deficiency.

Under the Senate amendment, the National Taxpayer Advocate is to appoint a counsel in the Office of the Taxpayer Advocate to report directly to the National Taxpayer Advocate.

Taxpayer assistance orders

The provision expands the circumstances under which a TAO may be issued. The Senate amendment provides that a "significant hardship" is deemed to occur if one of the following four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer's account problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if relief is not granted; or (4) the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted. These factors are not an exclusive list of what constitutes a significant hardship; a TAO may also be issued in other circumstances in which it is determined that the taxpayer is or will suffer a significant hardship. The Taxpayer Advocate is also authorized to issue a TAO in any circumstances that the Taxpayer Advocate considers appropriate for the issuance of a TAO.

In determining whether to issue a TAO in cases in which the IRS failed to follow applicable published guidance (including procedures set forth in the Internal Revenue Manual), the Taxpayer Advocate is to construe the matter in a manner most favorable to the taxpayer.

Reports of the National Taxpayer Advocate

The provision requires the annual report regarding the activities of the National Taxpayer Advocate for the most recently ended fiscal year to (in addition to the information required under present law): (1) identify areas of the tax law that impose significant compliance burdens on taxpayers or the IRS, including specific recommendations for remedying such problems; and (2) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes.

Effective date

The Senate amendment provision is generally effective on the date of enactment. During the period before the appointment of the IRS Oversight Board, the National Taxpayer Advocate shall be appointed by the Secretary (taking into consideration individuals nominated by the Commissioner) from among individuals who have a background in customer service as well as tax law and experience in representing individual taxpayers. The provision providing that the Taxpayer Advocate reports directly to the Commissioner, the provision providing that the Taxpayer Advocate is appointed by the Secretary, and the restrictions on previous and subsequent employment of the Taxpayer Advocate do not apply to the individual serving as the Taxpayer Advocate on the date of enactment.

Conference Agreement

National Taxpayer Advocate

The conference agreement follows the Senate amendment, with modifications. The conference agreement does not include the Senate amendment provision that the IRS Oversight Board is to recommend to the Secretary 3 candidates for National Taxpayer Advocate; instead, the conference agreement provides that the National Taxpayer Advocate is appointed by the Secretary after consultation with the Commissioner and the Board (without regard to the provisions of Title 5 of the U.S. Code, relating to appointments in the competitive service or the Senior Executive Service). The conference agreement modifies the Senate amendment provision that an individual may be appointed as

the National Taxpayer Advocate only if the individual was not an officer or employee of the IRS during the 2-year period ending with such appointment and the individual agrees not to accept employment with the IRS for at least 5 years after ceasing to be the National Taxpayer Advocate. The conference agreement provides that service as an officer or employee of the Office of the Taxpayer Advocate is not taken into account, for purposes of these 2-year and 5-year rules. The conference agreement also clarifies that the National Taxpayer Advocate's compensation is to be at the highest rate of basic pay established for the Senior Executive Service, or, if the Treasury Secretary so determines, at a rate fixed under 5 U.S. Code section 9503.

The conferees intend that the National Taxpayer Advocate's responsibility to appoint local taxpayer advocates and make available at least one local taxpayer advocate for each State means that a local taxpayer advocate will be available to taxpayers in each State.

The conference agreement does not include the Senate amendment provision that the National Taxpayer Advocate has the responsibility and authority to appoint a counsel in the Office of the Taxpayer Advocate to report directly to the National Taxpayer Advocate. The conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate.

The conference agreement provides that each local taxpayer advocate reports to the National Taxpayer Advocate or his delegate. The committees intend that a delegate mean the taxpayer advocate for the appropriate organizational unit. It is not intended that a local taxpayer advocate report to a District Director of the IRS, for example. Providing reporting to a delegate of the National Taxpayer Advocate under the conference agreement is intended to provide reporting flexibility sufficient to take into account the necessities of any reorganization of the IRS.

Taxpayer assistance orders

The conference agreement follows the Senate amendment, except that the conference agreement does not include the Senate amendment provision that the Taxpayer Advocate is authorized to issue a TAO in any circumstances that the Taxpayer Advocate considers appropriate for the issuance of a TAO. Instead, the conference agreement provides that the National Taxpayer Advocate may issue a TAO if the taxpayer meets requirements set forth in regulations. It is intended that the circumstances set forth in regulations be based on considerations of equity.

Effective date

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the provisions are effective on date of enactment, except that in appointing the first National Taxpayer Advocate after date of enactment, the Treasury Secretary may not appoint anyone who was an officer or employee of the IRS at any time during the 2-year period ending on the date of appointment, and the Treasury Secretary need not consult with the Board if the Board has not been appointed.

E. Treasury Office of Inspector General; IRS Office of the Chief Inspector (secs. 1102 and 1103 of the Senate amendment)

Present Law

Treasury Inspector General

The Treasury Office of Inspector General ("Treasury IG") was established in 1988 and charged with conducting independent audits, investigations and review to help the Department of Treasury accomplish its mission, improve its programs and operations, promote economy, efficiency and effectiveness,

and prevent and detect fraud and abuse. The Treasury IG derives its statutory authority under the Inspector General Act of 1978, as amended ("IG Act of 1978").

Appointment and qualifications

The IG Act of 1978 provides that the Treasury IG is selected by the President, with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Treasury IG can be removed from office by the President. The President must communicate the reasons for such removal to both Houses of Congress.

Duties and responsibilities

The Treasury IG generally is authorized to conduct, supervise and coordinate internal audits and investigations relating to the programs and operations of the Treasury, including all of its bureaus and offices.²⁰ Special rules apply, however, with respect to the Treasury IG's jurisdiction over ATF, Customs, the Secret Service and the IRS—the four so-called "law enforcement bureaus." Upon its establishment, the Treasury IG assumed the internal audit functions previously performed by the offices of internal affairs of ATF, Customs and the Secret Service. Although the Treasury IG was granted oversight responsibility for the internal investigations performed by the Office of Internal Affairs of ATF, the Office of Internal Affairs of Customs, and the Office of Inspections of the Secret Service, the internal investigation or inspection functions of these offices remained with the respective bureaus. The Treasury IG did not assume responsibility for either the internal audit or inspection functions of the IRS Office of the Chief Inspector. However, it was directed to oversee the internal audits and internal investigations performed by the IRS Office of the Chief Inspector.

The Commissioner and the Treasury IG have entered into two Memorandums of Understanding ("MOUs")²¹ to clarify the respective roles of the IRS Office of the Chief Inspector and the Treasury IG in two primary areas: (1) the investigation of allegations of wrongdoing by IRS executives and employees in situations where the independence of the Office of the Chief Inspector could be questioned, and (2) oversight by the Treasury IG of the IRS Office of the Chief Inspector.²² Pursuant to the 1990 MOU, the Commissioner agreed to transfer 21 FTEs and \$1.9 million from the IRS appropriation to the Treasury IG appropriation to be used for the following purposes: (1) oversight of the operations of the Office of the Chief Inspector; (2) conduct of special reviews of IRS operations; (3) investigation of allegations of misconduct concerning the Commissioner, the Senior Dep-

²⁰The Treasury Department organization includes the Departmental offices as well as the Bureau of Alcohol, Tobacco and Firearms ("ATF"), the Office of the Comptroller of the Currency ("OCC"), the U.S. Customs Service ("Customs"), the Bureau of Engraving and Printing, the Federal Law Enforcement Training Center, the Financial Management Service, the U.S. Mint, the Bureau of the Public Debt, the U.S. Secret Service ("Secret Service"), the Office of Thrift Supervision, and the IRS.

²¹The first MOU was entered into in 1990 and the second in 1994.

²²Treasury Directive 40-01 (September 21, 1992) reiterates that the Treasury IG is responsible for investigating alleged misconduct on the part of IRS employees at the grade 15 level and above, all employees of the Office of the Chief Inspector. In addition, Treasury Directive 40-01 states that the Treasury IG is responsible for investigating alleged misconduct on the part of Office of Chief Counsel employees (excluding employees of the National Director, Office of Appeals).

uty Commissioner, and employees of the IRS Office of the Chief Inspector; and (4) investigation of allegations of misconduct where the independence of the IRS Office of the Chief Inspector might be questioned. With respect to item (4), the Commissioner and Treasury IG agreed that all allegations of misconduct involving IRS executives and managers (Grade 15 and above), as well as any other allegation involving "significant or notorious" matters were to be referred to the Treasury IG, and that investigations arising out of such referrals generally would be conducted by the Treasury IG.

In general, under the IG Act of 1978, Inspectors General are instructed to report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. However, in matters involving criminal violations of the Internal Revenue Code, the Treasury IG may report to the Attorney General only those offenses under section 7214 of the Code (unlawful acts of revenue officers or agents, including extortion, bribery and fraud) without the consent of the Commissioner.

Authority

The Treasury IG reports to and is under the general supervision of the Secretary of Treasury, acting through the Deputy Secretary. In general, the Secretary cannot prevent or prohibit the Treasury IG from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of any audit or investigation.

However, section 8D of the IG Act of 1978 grants the Secretary authority to prohibit audits or investigations by the Treasury IG under certain circumstances. In particular, the Treasury IG is under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning: (1) ongoing criminal investigations or proceedings; (2) undercover operations; (3) the identity of confidential sources, including protected witnesses; (4) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior; (5) intelligence or counterintelligence matters; (6) other matters the disclosure of which would constitute a serious threat to national security or to the protection of certain persons. With respect to audits, investigations or subpoenas that require access to the above-listed information, the Secretary may prohibit the Treasury IG from carrying out such audit, investigation or subpoena if the Secretary determines that such prohibition is necessary to prevent the disclosure of such information or to prevent significant impairment to the national interests of the United States. The Secretary must provide written notice of such a prohibition to the Treasury IG, who must, in turn, transmit a copy of such notice to the Committees on Government Reform and Oversight and Ways and Means of the House and the Committees on Governmental Affairs and Finance of the Senate.

Access to taxpayer returns and return information

The Treasury IG has access to taxpayer returns and return information under section 6103(h)(1) of the Code. However, such access is subject to certain special requirements, including the requirement that the Treasury IG notify the IRS Office of the Chief Inspector (or the Deputy Commissioner in certain circumstances) of its intent to access returns and return information.

Reporting requirements

Under the IG Act of 1978, the Treasury IG reports to the Congress semiannually on its activities. Reports from the Treasury IG are transmitted to the Committees on Government Reform and Oversight and Ways and Means of the House and the Committees on Governmental Affairs and Finance of the Senate.

Resources

For fiscal year 1997, the Treasury IG had 296 FTEs and total funding of \$29.7 million. 174 FTEs were assigned to the Treasury IG's audit function and 61 were assigned to the investigative function. The remaining FTEs were divided among the following functions: evaluations, legal, program, technology and administrative support. Of the total Treasury IG FTEs, approximately 23 were used for IRS oversight activities in fiscal year 1997.

IRS Office of Chief Inspector

The IRS Office of the Chief Inspector (also known as the "Inspection Service") was established on October 1, 1951, in response to publicity revealing widespread corruption in the IRS. At the time of its creation, President Harry S. Truman stated, "A strong, vigorous inspection service will be established and will be made completely independent of the rest of the Internal Revenue Service."

Appointment of the Chief Inspector

In 1952, the Office of the Assistant Commissioner (Inspection) was established. The office was redesignated as the Office of the Chief Inspector on March 25, 1990. The Chief Inspector is appointed by the Commissioner. In this regard, pursuant to Treasury Director 40-01, the Commissioner must consult with the Treasury IG before selecting candidates for the position of Chief Inspector (and all other senior executive service ("SES") positions in the Office of the Chief Inspector). The Commissioner must also consult with the Treasury IG regarding annual performance appraisals for the Chief Inspector and other SES officials.

The Office of the Chief Inspector consists of a National Office and the offices of the Regional Inspectors. The offices of the Regional Inspectors are located in the same cities and have the same geographic boundaries as the offices of the four IRS Regional Commissioners. The Regional Inspectors report directly to the Chief Inspector.

Duties and responsibilities

The Office of the Chief Inspector generally is responsible for carrying out internal audits and investigations that: (1) promote the economic, efficient, and effective administration of the nation's tax laws; (2) detect and deter fraud and abuse in IRS programs and operations; and (3) protect the IRS against external attempts to corrupt or threaten its employees. The Chief Inspector reports directly to the Commissioner and Deputy Commissioner of the IRS.

The IRS Inspection Service is divided into three functions: Internal Security, Internal Audit, and Integrity Investigations and Activities. Internal Security's responsibilities include criminal investigations (employee conduct, bribery, assault and threat and investigations of non-IRS employees for acts such as impersonation, theft, enrolled agent misconduct, disclosure, and anti-domestic terrorism) investigative support activities (including forensic lab, computer investigative support, and maintenance of law enforcement equipment), protection, and background investigations.

Internal Audit is responsible for providing IRS management with independent reviews and appraisals of all IRS activities and operations. In addition, Internal Audit makes recommendations to improve the efficiency

and effectiveness of programs and to assist IRS officials in carrying out their program and operational responsibilities. In this regard, Internal Audit generally conducts performance reviews (program audits, system development audits, internal control audits) and financial reviews (financial statement audits and financial related reviews).

Integrity Investigations and Activities are joint internal audit and internal security operations undertaken as a proactive effort to detect and deter fraud and abuse within the IRS. Integrity Investigations and Activities also includes the UNAX Central Case Development Center. The Center was developed in October, 1997, in response to the Taxpayer Browsing Protection Act of 1997. Its purpose is to detect unauthorized accesses to IRS computer systems by IRS employees and to refer such instances to Internal Security investigators for further investigation.

Authority

The Chief Inspector derives specific and general authority from delegation by the Commissioner and Deputy Commissioner. In addition, under section 7608(b) of the Code, the Chief Inspector is authorized to perform certain functions in connection with the duty of enforcing any of the criminal provisions of the Code, including executing and serving search and arrest warrants, serving subpoenas and summonses, making arrests without warrant, carrying firearms, and seizing property subject to forfeiture under the Code.

Access to taxpayer returns and return information

The Office of the Chief Inspector has full access to taxpayer returns and return information.

Reporting requirements

The Office of the Chief Inspector reports facts developed through its internal audit and internal security activities to IRS management officials, who are charged with the responsibility of reviewing IRS activities. The results of the Chief Inspector's internal audit and internal security activities also are reported to the Treasury IG and are included in the Treasury IG's semiannual reports to Congress.

Internal audit reports prepared by the Office of the Chief Inspector are provided monthly to the Government Accounting Office, as well as to the House and Senate Appropriations Committees. In addition, a monthly list of Internal Audit reports is provided to Treasury and the Office of Management and Budget. Reports of Investigation regarding criminal conduct are referred to the Department of Justice for prosecution.

Resources

The IRS Office of the Chief Inspector had 1,202 FTEs for 1997 and total funding of \$100.1 million. Of these FTEs, approximately 442 performed Internal Audit functions, 511 performed Internal Security functions, and 94 performed Integrity Investigations and Activities. Of the remaining FTEs, approximately 95 were dedicated to information technology functions and 60 staffed the offices of the Chief Inspector and the Regional Inspectors.

House Bill

No provision.

Senate Amendment**In general**

The Senate amendment establishes a new, independent, Treasury Inspector General for Tax Administration ("Treasury IG for Tax Administration") within the Department of Treasury. The IRS Office of the Chief Inspector is eliminated, and all of its powers and responsibilities are transferred to the Treas-

ury IG for Tax Administration. The Treasury IG for Tax Administration has the powers and responsibilities generally granted to Inspectors General under the IG Act of 1978, without the limitations that currently apply to the Treasury IG under section D of the Act. The role of the existing Treasury IG is redefined to exclude responsibility for the IRS. The Treasury IG for Tax Administration is under the supervision of the Secretary of Treasury, with certain additional reporting to the Board and the Congress.

Appointment and qualifications of Treasury IG for Tax Administration

The Treasury IG for Tax Administration is selected by the President, with the advice and consent of the Senate. The Treasury IG for Tax Administration can be removed from office by the President. The President must communicate the reasons for such removal to both Houses of Congress.

The Treasury IG for Tax Administration must be selected without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. In addition, however, the Treasury IG for Tax Administration should have experience in tax administration and demonstrated ability to lead a large and complex organization. The Treasury IG for Tax Administration may not be employed by the IRS within the two years preceding and the five years following his or her appointment.

The Treasury IG for Tax Administration is required to appoint an Assistant Inspector General for Auditing and an Assistant Inspector for Inspections. Under the Senate amendment, such appointees, as well as any Deputy Inspector General(s) appointed by the Treasury IG for Tax Administration, may not be employed by the IRS within the two years preceding and the five years following their appointments.

Duties and responsibilities of Treasury IG for Tax Administration

The Treasury IG for Tax Administration has the present-law duties and responsibilities currently delegated to the Treasury IG with respect to the IRS. In addition, the Treasury IG for Tax Administration assumes all of the duties and responsibilities currently delegated to the IRS Office of the Chief Inspector. The Treasury IG for Tax Administration has jurisdiction over IRS matters, as well as matters involving the Board.

Accordingly, the Treasury IG for Tax Administration is charged with conducting audits, investigations, and evaluations of IRS programs and operations (including the Board) to promote the economic, efficient and effective administration of the nation's tax laws and to detect and deter fraud and abuse in IRS programs and operations. In this regard, the Treasury IG for Tax Administration specifically is directed to evaluate the adequacy and security of IRS technology on an ongoing basis. In addition, the Treasury IG for Tax Administration is responsible for protecting the IRS against external attempts to corrupt or threaten its employees. The Treasury IG for Tax Administration is charged with investigating allegations of criminal misconduct (e.g., Code sections 7212, 7213, 7214, 7216 and new section 7217), as well as administrative misconduct (e.g., violations of the Taxpayer Bill of Rights and the Taxpayer Bill of Rights 2, the Office of Government Ethics Standards of Ethical Conduct and the IRS Supplemental Standards of Ethical Conduct).

In addition, the Senate amendment directs the Treasury IG for Tax Administration to implement a program periodically to audit at least one percent of all determinations

(identified through a random selection process) where the IRS has asserted either section 6103 (directly or in connection with the Freedom of Information Act or the Privacy Act) or law enforcement considerations (i.e., executive privilege) as a rationale for refusing to disclose requested information. The program must be implemented within 6 months after establishment of the Treasury IG for Tax Administration. The Treasury IG for Tax Administration is directed to report any findings of improper assertion of section 6103 or law enforcement considerations to the Board.

Further, the Treasury IG for Tax Administration is directed to establish a toll-free confidential telephone number for taxpayers to register complaints of misconduct by IRS employees and to publish the telephone number in IRS Publication 1.

There are no restrictions on the Treasury IG for Tax Administration's ability to refer matters to the Department of Justice. Thus, the Treasury IG for Tax Administration is required to report to the Attorney General whenever the Treasury IG for Tax Administration has reasonable grounds to believe that there has been a violation of Federal criminal law.

Authority of Treasury IG for Tax Administration

The Treasury IG for Tax Administration reports to and is under the general supervision of the Secretary of Treasury. Under the Senate amendment, the Secretary cannot prevent or prohibit the Treasury IG for Tax Administration from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of any audit or investigation.

Under the Senate amendment, the Treasury IG for Tax Administration must provide to the Board all reports regarding IRS matters on a timely basis and conduct audits or investigations requested by the Board. The Treasury IG for Tax Administration also must, in a timely manner, conduct such audits or investigations and provide such reports as may be requested by the Commissioner.

In carrying out the duties and responsibilities described above, the Treasury IG for Tax Administration has the present-law authority generally granted to Inspectors General under the IG Act of 1978. The limitations on the authority of the Treasury IG under such Act do not apply to the Treasury IG for Tax Administration. In addition, the Treasury IG for Tax Administration has the authority granted to the IRS Office of the Chief Inspector under present-law Code section 7608, including the right to execute and serve search and arrest warrants, to serve subpoenas and summonses, to make arrests without warrant, to carry firearms, and to seize property subject to forfeiture under the Code.

Resources

To ensure that the Treasury IG for Tax Administration has sufficient resources to carry out his or her duties and responsibilities under the Senate amendment, all but 300 FTEs from the IRS Office of the Chief Inspector are transferred to the Treasury IG for Tax Administration. Such FTEs include all of the FTEs performing investigative functions in the Office of the Chief Inspector Internal Security and Integrity Investigations and Activities. In addition, the 21 FTEs previously transferred from Inspection to Treasury IG pursuant to the 1990 MOU to perform oversight of the IRS are transferred to the Treasury IG for Tax Administration.

The Commissioner will retain approximately 300 FTEs from the IRS Office of the Chief Inspector to staff an audit function (including support staff) for internal IRS management purposes. Like other IRS functions,

however, this audit function is subject to oversight and review by the Treasury IG for Tax Administration.

Access to taxpayer returns and return information

Taxpayer returns and return information are available for inspection by the Treasury IG for Tax Administration pursuant to section 6103(h)(1). Thus, the Treasury IG for Tax Administration has the same access to taxpayer returns and return information as does the Chief Inspector under present law.

Reporting requirements

The Treasury IG for Tax Administration is subject to the semiannual reporting requirements set forth in section 5 of the IG Act of 1978. As under present law, reports are made to the Committees on Government Reform and Oversight and Ways and Means of the House and the Committees on Governmental Affairs and Finance of the Senate. The reports must contain the information that is required to be reported by the Treasury IG with respect to the IRS under present law, as well as information regarding the source, nature and status of taxpayer complaints and allegations of serious misconduct by IRS employees received by the IRS or by the Treasury IG for Tax Administration. In addition, the Treasury IG for Tax Administration is required to report annually on certain additional information (e.g., regarding the use of enforcement statistics in evaluating IRS employees, the implementation of various taxpayer rights protections, and IRS employee terminations and mitigations) required by the Senate amendment.

Treasury IG

The Treasury IG generally continues to have its present-law responsibilities and authority with respect to all Treasury functions other than the IRS and the Board. However, the Treasury IG generally does not have access to taxpayer returns and return information under section 6103 (unless the Secretary specifically authorizes such access).

The Treasury IG for Tax Administration operates independently of the Treasury IG. The Secretary of Treasury is directed to establish procedures pursuant to which the Treasury IG for Tax Administration and the Treasury IG shall coordinate audits and investigations in cases involving overlapping jurisdiction.

The Treasury IG continues to have responsibility for providing an opinion on the Department of Treasury's consolidated financial statement as required under the Chief Financial Officer Act. The Treasury IG for Tax Administration is responsible for rendering an opinion on the IRS custodial and administrative accounts (to the extent the Government Accounting Office does not exercise its option to preempt under the CFO Act).

Effective date.—The provision is effective 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The conference agreement provides that experience in tax administration is not among the qualifications applicable to the Treasury IG for Tax Administration. With respect to the authority of the Treasury IG for Tax Administration, the conference agreement provides that the Commissioner or the Oversight Board may request the Treasury IG for Tax Administration to conduct an audit or investigation relating to the IRS. If the Treasury IG for Tax Administration determines not to conduct an audit or investigation requested by the Commissioner or the Oversight Board, the Treasury IG for Tax Administration shall timely provide the requesting party

with a written explanation of its determination. In this regard, the conferees intend that the Treasury IG for Tax Administration shall make all reasonable efforts to be responsive to the requests of the Commissioner and the Oversight Board. In addition, the conference agreement modifies the duties and responsibilities of the Treasury IG for Tax Administration by providing that the responsibility for (1) protecting IRS employees and (2) investigating the backgrounds of prospective IRS employees shall not be transferred to the Treasury IG for Tax Administration, but rather shall remain with the IRS.

F. Prohibition on Executive Branch Influence Over Taxpayer Audits (sec. 104 of the House bill and sec. 1105 of the Senate amendment)

Present Law

There is no explicit prohibition in the Code on high-level Executive Branch influence over taxpayer audits and collection activity.

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding \$5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

House Bill

The House bill makes it unlawful for a specified person to request that any officer or employee of the IRS conduct or terminate an audit or otherwise investigate or terminate the investigation of any particular taxpayer with respect to the tax liability of that taxpayer. The prohibition applies to the President, the Vice President, and employees of the executive offices of either the President or Vice President, as well as any individual (except the Attorney General) serving in a position specified in section 5312 of Title 5 of the United States Code (these are generally Cabinet-level positions). The prohibition applies to both direct requests and requests made through an intermediary.

Any request made in violation of this rule must be reported by the IRS employee to whom the request was made to the Chief Inspector of the IRS, who has the authority to investigate such violations and to refer any violations to the Department of Justice for possible prosecution, as appropriate. Anyone convicted of violating this provision will be punished by imprisonment of not more than 5 years or a fine not exceeding \$5,000 (or both).

The general prohibition does not apply (1) to a request made to a specified person by a taxpayer or a taxpayer's representative that is forwarded by the specified person to the IRS; (2) to requests for disclosure of returns or return information under section 6103 if the request is made in accordance with the requirements of section 6103; and (3) to requests made by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

Effective date.—The provision applies to violations occurring after the date of enactment.

Senate Amendment

Same as the House bill; in addition, the Senate amendment clarifies that the prohibition applies to direct or indirect requests.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

G. Review of Milwaukee and Waukesha IRS Offices (sec. 1106 of the Senate amendment)

Present Law

A task force was initiated in January, 1998, to conduct an investigation of the equal employment opportunity process in the IRS' Milwaukee and Waukesha, Wisconsin offices.

House Bill

No provision.

Senate Amendment

The Senate amendment directs the IRS Commissioner to appoint an independent expert in employment and personnel matters to review the investigation conducted by the task force and report to Congress with recommendations for action not later than July 1, 1999. The review should include a determination of the accuracy and validity of such investigation; and if determined necessary by the expert, a further investigation of such offices relating to: (1) the equal employment opportunity process; and (2) any alleged discriminatory employment-related actions, including any alleged violation of Federal law.

Effective date.—The Senate amendment provisions is effective on date of enactment.

Conference Agreement

The conference agreement follows the House bill. However, the conferees intend that the task force continue to its conclusion. The conferees intend that the General Accounting Office review the report of the task force and report to the House Committee on Ways and Means and the Senate Committee on Finance.

H. IRS Personnel Flexibilities (sec. 111 of the House bill and secs. 1201-1205 of the Senate amendment)

Present Law

The IRS is subject to the personnel rules and procedures set forth in title 5, United States Code, which regulate hiring, evaluating, promoting, and firing employees. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

House Bill

In general

The House bill provides that the IRS exercise the personnel flexibilities consistently with existing rules relating to merit system principles, prohibited personnel practices, and preference eligibles. In those cases where the exercise of personnel flexibilities would affect members of the employees' union, such employees would not be subject to the exercise of any flexibility unless there is a written agreement between the IRS and the employees' union. The written agreement would not be a contract that could be appealed to the Federal Services Impasse Panel, or otherwise create additional appeal rights.

Performance management system

The House bill requires the IRS to establish a new performance management system within one year from the date of enactment. The performance management system would maintain individual accountability by: (1) establishing at least 2 standards of performance, the lowest of which would be the retention standard and would be equivalent to fully successful performance; (2) providing for periodic performance evaluations to determine whether employees are meeting all applicable retention standards; and (3) using the results of such employee's performance evaluation as a basis for adjustments in pay and other appropriate personnel actions. In addition, the performance management system would provide for: (1) establishing goals or objectives for individual, group or organizational performance and taxpayer service

surveys; (2) communicating such goals or objectives to employees; and (3) using such goals or objectives to make performance distinctions among employees or groups of employees. It is intended the in no event would performance measures be used which rank employees or groups of employees based solely on enforcement results, establish dollar goals for assessments or collections, or otherwise undermine fair treatment of taxpayers.

Awards

The House bill addresses three types of awards. First, certain awards for superior accomplishments would continue to require certification to the Office of Personnel Management (OPM), but absent objection from OPM within 60 days, the Commissioner's recommendations for such awards would take effect. As with all awards, these awards would be made based on performance under the new performance management system, and in no case would awards be made (or performance measured) based solely or principally on tax enforcement results.

The second category of awards relates to the most senior managers in the IRS. The Commissioner has discretion, upon consultation with the IRS Oversight Board established under section 101 of the House bill, to make awards of up to 50 percent of salary to such manager, so long as the total compensation for an employee as a result of such award does not equal or exceed the annual rate of compensation for the Vice President for such calendar year. As with awards for superior accomplishments, OPM would have 60 days to object. The Commissioner would be required to prescribe regulations defining how determinations would be made as to whether an employee is eligible for such awards. In no case, however, would more than 8 employees be eligible to receive such awards in any calendar year.

The third category of awards would be based on savings and would encourage the practice of rewarding employees for developing more efficient methods of administration. A cash award under this category would not be based solely on tax enforcement results.

Streamlined procedures

The House bill streamlines the process of taking certain adverse actions for poor performance by (1) reducing the notice period for taking adverse actions from 30 days to 15 days, and (2) prohibiting appeals of the denial of a step increase to the Merit Systems Protections Board. Aggrieved employees could appeal such actions pursuant to internal agency procedures, including any procedures agreed to pursuant to collective bargaining agreements or pursuant to the written agreement authorizing the use of this flexibility.

Staffing flexibilities

The House bill provides the IRS with flexibility in filling certain permanent appointments in the competitive service by authorizing the IRS to fill such vacancies with either qualified veterans or qualified temporary employees. For purpose of this provision, a qualified veteran is an individual who is either a preference eligible or has been separated from the armed forces under honorable conditions after at least three years of active service, and who meets the minimum qualifications for the vacant position. A qualified temporary employee is defined under the bill as a temporary employee of the IRS with at least two years of continuous service, who has met all applicable retention standards and who meets the minimum qualifications for the vacant position.

The House bill authorizes the IRS to establish category rating systems for evaluating

job applicants, under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings. Managers would be authorized to select any candidate from the highest quality category, and would not be limited to the three highest ranked candidates. In administering these category rating systems, the IRS generally would be required to list preference eligibles ahead of other individuals within each quality category. The appointing authority, however, could select any candidate from the highest quality category, as long as existing requirements relating to passing over preference eligibles were satisfied.

The House bill authorizes the Commissioner to reassign or remove career appointees in the Senior Executive Service immediately upon taking office.

The House bill authorizes the Commissioner to establish probation periods for IRS employees of up to 3 years, when the Commissioner determines that a shorter period is not sufficient for an employee to demonstrate proficiency in a position.

Demonstration projects

The House bill authorizes the Commissioner to conduct 1 or more demonstration projects to (1) improve personnel management, (2) provide increased individual accountability, (3) eliminate obstacles to the removal or imposing any disciplinary action with respect to poor performers, subject to the requirements of due process, (4) expedite appeals from adverse actions or performance-based actions, and (5) promote pay based on performance.

The House bill maintains a number of the existing prohibitions on demonstration projects, including the prohibition on using demonstration projects to waive any requirement of title 5 relating to family and medical leave. The House bill requires the IRS to negotiate a written agreement with the employees' union to the extent that the implementation of a demonstration project affects such employees.

The House bill establishes a general time limitation of 5 years on the duration of any demonstration project. However, if the Commissioner and the Director of OPM concur, a demonstration project could be extended for an additional 2 years if necessary to validate the results of the project. Not later than 6 months prior to the termination of a project, the House bill would require the Commissioner to submit a legislative proposal to the Congress if the Commissioner determines that such project should be made permanent.

Effective date

The provision is effective on the date of enactment.

Senate Amendment

In general

The Senate amendment is the same as the House bill except that negotiation impasses between the IRS and the employees' union may be appealed to the Federal Services Impasse Panel.

Senior management and technical positions

Streamlined critical pay authority

The Senate amendment provides a streamlined process for the Secretary of the Treasury, or his delegate, to fix the compensation of, and appoint up to 40 individuals to, designated critical technical and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical, administrative or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such

positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President (currently, \$175,400).

These appointments are not subject to the otherwise applicable requirements under title 5. All such appointments will be excluded from the collective bargaining unit and the appointments will not be subject to approval of the Office of Management and Budget ("OMB") or the Office of Personnel Management ("OPM").

The streamlined authority will be limited to a period of 10 years.

Critical pay authority

The Senate amendment provides OMB with authority to set the pay for certain critical pay positions requested by the Secretary under section 5377 of title 5 of the United States Code at levels higher than authorized under current law. These critical pay positions would be critical technical, administrative and professional positions other than those designated under the streamlined authority. The Senate amendment authorizes OMB to approve requests for critical position pay up to the rate of pay of the Vice President (currently, \$175,400).

Recruitment, retention and relocation incentives

The Senate amendment authorizes the Secretary to vary from the existing provisions governing recruitment, retention and relocation incentives. The authority will be for a period of 10 years and will be subject to OPM approval.

Career-reserve Senior Executive Service ("SES") positions

The Senate amendment broadens the definition of a "career reserved position" in the SES to include a limited emergency appointee or a limited term appointee who, immediately upon entering the career-reserved position, was serving under a career or a career-conditional appointment outside the SES or whose limited emergency or limited term appointment is approved in advance by OPM. The number of appointments to these SES positions will be limited to up to 10 percent of the total number of SES positions available to the IRS. These positions will be limited to a 3-year term, with the option of extending the term for 2 more 3-year terms.

Performance management system

The Senate amendment is the same as the House bill except that (1) the Senate amendment does not require that the IRS establish the performance management system within one year from the date of enactment, and (2) the Senate amendment does not provide for the establishment of at least 2 standards of performance. The Senate amendment permits the IRS to establish one or more retention standards for each employee related to the work of the employee and expressed in terms of performance.

Awards

The Senate amendment is the same as the House bill except that the Senate amendment (1) provides that awards for superior accomplishments between \$10,000 and \$25,000 would not be subject to OPM approval, and (2) provides the Secretary with the authority to provide performance bonus awards to IRS senior executives of up to one-third of the individual's annual compensation. The bonus award would be based on meeting preset performance goals established by the IRS. An individual's total annual compensation, including the bonus, cannot exceed the rate of

pay of the Vice President. The authority will not be subject to OPM approval. It is anticipated that the bonuses will not be available to more than 25 IRS senior executives annually.

Staffing flexibilities

The Senate amendment is the same as the House bill, except that the Senate amendment (1) does not include the requirement that the IRS fill vacancies with qualified veterans, and (2) does not authorize the Commissioner to reassign or remove career appointees in the Senior Executive Service immediately upon taking office. The current law rule which provides that career appointees may not be involuntarily removed within 120 days after the appointment of the head of the agency continues to apply.

The Senate amendment authorizes the Secretary to establish one or more broad band pay systems covering all or any portion of the IRS workforce, subject to OPM criteria.

The Senate amendment authorizes the IRS to use Voluntary Separation Incentive Pay ("buyouts") through December 31, 2002. The use of voluntary separation incentive is not intended to reduce the total number of Full-Time Equivalent ("FTE") positions in the IRS.

Demonstration projects

The Senate amendment is the same as the House bill except that the Senate amendment (1) does not include the prohibitions on demonstration projects, and (2) provides authority to the Secretary and OPM to waive the termination of a demonstration project, thereby making it permanent. At least 90 days prior to waiving the termination date OPM will be required to publish a notice of such intent in the Federal Register and inform the appropriate Committees (including the House Ways and Means Committee, the House Government Reform and Oversight Committee, the Senate Finance Committee and the Senate Governmental Affairs Committee) of both Houses of Congress in writing.

Mandatory employee terminations

The Senate amendment requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties. The violations include: (1) failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) falsifying or destroying documents to avoid uncovering mistakes made by the employee with respect to a matter involving a taxpayer; (4) assault or battery on a taxpayer or other IRS employee; (5) violation of the civil rights of a taxpayer or other IRS employee; (6) violations of the Internal Revenue Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

The Senate amendment provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Senate amendment also provides that the

Commissioner, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred for such a determination by the Commissioner. The Treasury IG is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in the IG's annual report.

IRS employee training program

The Senate amendment requires the IRS to place a high priority on employee training and to adequately fund employee training programs. The bill also requires the IRS to provide to the Congressional tax writing committees a comprehensive multi-year plan to: (1) ensure adequate customer service training; (2) review the organizational design of customer service; (3) implement a performance development system; and (4) provide for at least sixteen hours of conflict management training during 1999 for collection employees.

Effective date

The provision is effective on the date of enactment except that the IRS employee training program would be effective 90 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. The conference agreement includes the House bill provision requiring the IRS to establish a new performance management system within one year from the date of enactment.

The conferees intend to give the IRS flexibility to establish a new performance management system. The conferees expect that this will refocus the IRS' personnel system on the overall mission of the IRS and how each employee's performance relates to that mission. Although the new performance standards are premised on the notion of retention, such standards should go beyond simply establishing a retention/non-retention or pass-fail performance system. At a minimum, the conferees believe that there should be at least one standard above the retention standard. This will enable managers to make meaningful distinctions among employees based on performance, to encourage employees to perform at a higher level and to reward superior performance.

The conference agreement permits the Secretary to appoint an individual, who was appointed an IRS employee on or after June 1, 1998, to a critical pay position under the streamlined critical pay authority.

The conference agreement also authorizes the IRS to pay certain relocation expenses for individuals appointed to critical pay positions after June 1, 1998. This authority is for a period of 10 years after the date of enactment.

The provision (in particular the written agreement requirement) is not intended to expand the jurisdiction of the Federal Service Impasses Panel.

With respect to mandatory terminations of employees for certain proven violations committed by the employee in connection with the performance of official duties, the conference agreement modifies the definitions of some of the violations. The definitions of the other violations are the same as the Senate amendment. The modified definitions are: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (3) falsifying or destroying documents to

conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative; and (4) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under titles VI or VII of the Civil Rights Act of 1964, title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and title I of the Americans with Disabilities Act of 1990.

The conference agreement also provides that the Commissioner is to implement an employee training program no later than 180 days after enactment.

TITLE II. ELECTRONIC FILING

A. Electronic Filing of Tax and Information Returns (sec. 201 of the House bill and sec. 2001 of the Senate amendment)

Present Law

Treasury Regulations section 1.6012-5 provides that the Commissioner may authorize a taxpayer to elect to file a composite return in lieu of a paper return. An electronically filed return is a composite return consisting of electronically transmitted data and certain paper documents that cannot be electronically transmitted.

The IRS periodically publishes a list of the forms and schedules that may be electronically transmitted, as well as a list of forms, schedules, and other information that cannot be electronically filed.

During the 1997 tax filing season, the IRS received approximately 20 million individual income tax returns electronically.

House Bill

The House bill states that the policy of Congress is to promote paperless filing, with a long-range goal of providing for the filing of at least 80 percent of all tax returns in electronic form by the year 2007. The provision requires the Secretary of the Treasury to establish a strategic plan to eliminate barriers, provide incentives, and use competitive market forces to increase taxpayer use of electronic filing. The provision requires all returns prepared in electronic form but filed in paper form to be filed electronically, to the extent feasible, by the year 2002.

The provision requires the Secretary to promote electronic filing and to create an electronic commerce advisory group and to report annually to the Congress on electronic filing implementation issues.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill, except as follows. The Senate amendment also states that it is the policy of Congress that electronic filing should be a voluntary option for taxpayers. The Senate amendment also requires that the annual report discuss the effects on small businesses and the self-employed of electronically filing tax and information returns.

In addition, the Senate amendment states that the policy of Congress is that the IRS should cooperate with the private sector by encouraging competition to increase electronic filing.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement generally follows the Senate amendment, except that the provision in the Senate amendment that states that it is the policy of Congress that electronic filing should be a voluntary option for taxpayers is deleted.¹ The provision

on private sector cooperation is clarified to provide that the IRS should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of returns. The intent of the conferees with respect to this provision is for the IRS and Treasury to press for robust private sector competition. When disputes arise between the IRS and the private sector on the question of whether services offered by the IRS inhibit competition or are appropriate services not reasonably available to taxpayers or tax preparers, the Electronic Commerce Advisory Group shall recommend to the IRS Commissioner an appropriate course of action. Those recommendations shall also be made available to the Congress. Notwithstanding the previous sentence, the conferees also intend that the IRS should continue to offer and improve its Telefile program and make available a comparable program on the Internet.

B. Due Date for Certain Information Returns (sec. 202 of the House bill and sec. 2002 of the Senate amendment)

Present Law

Information such as the amount of dividends, partnership distributions, and interest paid during the calendar year must be supplied to taxpayers by the payors by January 31 of the following calendar year. The payors must file an information return with the IRS with the information by February 28 of the year following the calendar year for which the return must be filed. Under present law, the due date for filing information returns with the IRS is the same whether such returns are filed on paper, on magnetic media, or electronically. Most information returns are filed on magnetic media (such as computer tapes), which are physically shipped to the IRS.

House Bill

The House bill provides an incentive to filers of information returns to use electronic filing by extending the due date for filing such returns with the IRS from February 28 (under present law) to March 31 of the year following the calendar year to which the return relates.

Effective date.—Information returns required to be filed after December 31, 1999.

Senate Amendment

Same as the House bill except that the Senate amendment also requires the Treasury to issue a study evaluating the merits and disadvantages, if any, of extending the deadline for providing taxpayers with copies of information returns (other than Forms W-2) from January 31 to February 15.

Effective date.—Same as the House bill, except that the Treasury study is due by December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, except that the Treasury study is due by June 30, 1999.

C. Paperless Electronic Filing (sec. 203 of the House bill and sec. 2003 of the Senate amendment)

Present Law

Code section 6061 requires that tax forms be signed as required by the Secretary. The IRS will not accept an electronically filed return unless it has also received a Form 8453, which is a paper form that contains signature information of the filer.

A return generally is considered timely filed when it is received by the IRS on or be-

fore the due date of the return. If the requirements of Code section 7502 are met, timely mailing is treated as timely filing. If the return is mailed by registered mail, the dated registration statement is prima facie evidence of delivery.

The IRS periodically publishes a list of the forms and schedules that may be electronically transmitted, as well as a list of forms, schedules, and other information that cannot be electronically filed.

House Bill

The House bill requires the Secretary to develop procedures that would eliminate the need to file a paper form relating to signature information. Until the procedures are in place, the provision authorizes the Secretary to provide for alternative methods of signing all returns, declarations, statements, or other documents or to waive the signature requirement. An alternative method of signature would be treated identically, for both civil and criminal purposes, as a signature on a paper form.

The provision also provides rules for determining when electronic returns are deemed filed and for authorization for return preparers to communicate with the IRS on matters included on electronically filed returns.

The provision requires the Secretary to establish procedures, to the extent practicable, to receive all forms electronically for taxable periods beginning after December 31, 1998.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill, with the following exceptions. (1) The Senate amendment deletes the provision permitting the Secretary to waive the signature requirement. (2) The Secretary of the Treasury must establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database not later than the date such records are available to the public in printed form. (3) The Secretary of the Treasury must, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in a searchable database not later than the date such guidance is available to the public in printed form.

Effective date.—Generally effective on the date of enactment. The provision which relates to Internet access to IRS forms, instructions, publications, and guidance is effective for taxable periods beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The Secretary is permitted to waive the signature requirement, but only returns signed or subscribed under alternative methods prescribed by the Secretary (not including waiver) are entitled to be treated as though signed or subscribed. The provision that requires the Secretary, to the extent practicable, to receive all forms electronically applies to taxable periods after December 31, 1999. The provision relating to authorizing return preparers to communicate with the IRS on matters included on electronically filed returns is clarified.

D. Return-Free Tax System (sec. 204 of the House bill and sec. 2004 of the Senate amendment)

Present Law

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations.

¹No inference is intended by this deletion. Present law (section 6011(e)(1) of the Code) already states

that returns of any tax imposed by subtitle A (income taxes and self-employment taxes) on individuals, estates and trusts may not be required to be filed in any format (such as by electronic means) other than on paper forms supplied by the IRS.

House Bill

The provision requires the Secretary or his delegate to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007. The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system. The Secretary is required to make the first report on the development of the return-free tax system to the tax-writing committees by June 30, 2000.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

E. Access to Account Information (sec. 205 of the House bill and sec. 2005 of the Senate amendment)**Present Law**

Taxpayers who file their returns electronically cannot review their accounts electronically.

House Bill

The House bill requires the Secretary to develop procedures not later than December 31, 2006, under which a taxpayer filing returns electronically (or the taxpayer's designee under section 6103(c)) could review the taxpayer's own account electronically, but only if all necessary privacy safeguards are in place by that date.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill, except that the Secretary is also required to issue an interim progress report to the tax-writing committees by December 31, 2003.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE III. TAXPAYER PROTECTION AND RIGHTS**A. Burden of Proof (sec. 301 of the House bill and sec. 3001 of the Senate amendment)****Present Law**

Under present law, a rebuttable presumption exists that the Commissioner's determination of tax liability is correct. "This presumption in favor of the Commissioner is a procedural device that requires the plaintiff to go forward with prima facie evidence to support a finding contrary to the Commissioner's determination. Once this procedural burden is satisfied, the taxpayer must still carry the ultimate burden of proof or persuasion on the merits. Thus, the plaintiff not only has the burden of proof of establishing that the Commissioner's determination was incorrect, but also of establishing the merit of its claims by a preponderance of the evidence" (*Danville Plywood Corp. v. U.S.*, U.S. Cl. Ct., 63 AFTR 2d 89-1036, 1043 (1989)).

The general rebuttable presumption that the Commissioner's determination of tax liability is correct is a fundamental element of the structure of the Internal Revenue Code. Although this presumption is judicially based, rather than legislatively based, there is considerable evidence that the presumption has been repeatedly considered and approved by the Congress. This is the case because the Internal Revenue Code contains a number of civil provisions that explicitly place the burden of proof on the Commissioner in specifically designated circumstances.

House Bill

The House bill provides that the Secretary shall have the burden of proof in any court

proceeding with respect to a factual issue if the taxpayer asserts a reasonable dispute with respect to any such issue relevant to ascertaining the taxpayer's income tax liability. Two conditions apply. First, the taxpayer must fully cooperate at all times with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary).² Full cooperation also includes providing reasonable assistance to the Secretary in obtaining access to and inspection of witnesses, information, or documents not within the control of the taxpayer (including any witnesses, information, or documents located in foreign countries).³ A necessary element of fully cooperating with the Secretary is that the taxpayer must exhaust his or her administrative remedies (including any appeal rights provided by the IRS). The taxpayer is not required to agree to extend the statute of limitations to be considered to have fully cooperated with the Secretary. Second, certain taxpayers must meet the net worth limitations that apply for awarding attorney's fees. In general, corporations, trusts, and partnerships whose net worth exceeds \$7 million are not eligible for the benefits of the provision. The taxpayer has the burden of proving that it meets each of these conditions, because they are necessary prerequisites to establishing that the burden of proof is on the Secretary.

The provision explicitly states that nothing in the provision shall be construed to override any requirement under the Code or regulations to substantiate any item. Accordingly, taxpayers must meet all applicable substantiation requirements, whether generally imposed or imposed⁴ with respect to specific items, such as charitable contributions⁵ or meals, entertainment, travel, and certain other expenses.⁶ Substantiation requirements include any requirement of the Code or regulations that the taxpayer establish an item to the satisfaction of the Secretary.⁷ Taxpayers who fail to substantiate any item in accordance with the legal requirement of substantiation will not have satisfied all of the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return and will accordingly be unable to avail themselves of this provision regarding the burden of proof. Thus, if a taxpayer required to substantiate an item fails to do so in the manner required (or destroys the substantiation), this burden of proof provision is inapplicable.⁸

²This requirement parallels the present-law provision relating to reasonable verification of information returns (sec. 6201(d)).

³Full cooperation also includes providing English translations, as reasonably requested by the Secretary.

⁴See e.g., Sec. 6001 and Treas. Reg. sec. 1.6001-1 requiring every person liable for any tax imposed by this Title to keep such records as the Secretary may from time to time prescribe, and secs. 6038 and 6038A requiring United States persons to furnish certain information the Secretary may prescribe with respect to foreign businesses controlled by the U.S. person.

⁵Sec. 170(a)(1) and (f)(8) and Treas. Reg. sec. 1.170A-13.

⁶Sec. 274(d) and Treas. Reg. sec. 1.274(d)-1, 1.274-5T, and 1.274-5A.

⁷For example, sec. 905(b) of the Code provides that foreign tax credits shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary all information necessary for the verification and computation of the credit. Instructions for meeting that requirement are set forth in Treas. Reg. sec. 1.905-2.

⁸If, however, the taxpayer can demonstrate that he had maintained the required substantiation but that it was destroyed or lost through no fault of the taxpayer, such as by fire or flood, existing tax rules regarding reconstruction of those records would continue to apply.

Effective date.—The provision applies to court proceedings arising in connection with examinations commencing after the date of enactment.

Senate Amendment

The Senate amendment provides that the Secretary shall have the burden of proof in any court proceeding with respect to a factual issue if the taxpayer introduces credible evidence with respect to the factual issue relevant to ascertaining the taxpayer's income tax liability. Four conditions apply. First, the taxpayer must comply with the requirements of the Internal Revenue Code and the regulations issued thereunder to substantiate any item (as under present law). Second, the taxpayer must maintain records required by the Code and regulations (as under present law). Third, the taxpayer must cooperate with reasonable requests by the Secretary for meetings, interviews, witnesses, information, and documents (including providing, within a reasonable period of time, access to and inspection of witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary). Cooperation also includes providing reasonable assistance to the Secretary in obtaining access to and inspection of witnesses, information, or documents not within the control of the taxpayer (including any witnesses, information, or documents located in foreign countries).⁹ A necessary element of cooperating with the Secretary is that the taxpayer must exhaust his or her administrative remedies (including any appeal rights provided by the IRS). The taxpayer is not required to agree to extend the statute of limitations to be considered to have cooperated with the Secretary. Cooperating also means that the taxpayer must establish the applicability of any privilege. Fourth, taxpayers other than individuals must meet the net worth limitations that apply for awarding attorney's fees (accordingly, no net worth limitation would be applicable to individuals). Corporations, trusts, and partnerships whose net worth exceeds \$7 million are not eligible for the benefits of the provision. The taxpayer has the burden of proving that it meets each of these conditions, because they are necessary prerequisites to establishing that the burden of proof is on the Secretary.

In the case of court proceedings arising in connection with examinations commencing six months after the date of enactment and before June 1, 2001, the provision applies to any tax liability of the taxpayer.

The burden will shift to the Secretary under this provision only if the taxpayer first introduces credible evidence with respect to a factual issue relevant to ascertaining the taxpayer's income tax liability. Credible evidence is the quality of evidence which, after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted (without regard to the judicial presumption of IRS correctness). A taxpayer has not produced credible evidence for these purposes if the taxpayer merely makes implausible factual assertions, frivolous claims, or tax protestor-type arguments. The introduction of evidence will not meet this standard if the court is not convinced that it is worthy of belief. If after evidence from both sides, the court believes that the evidence is equally balanced, the court shall find that the Secretary has not sustained his burden of proof.

Nothing in the provision shall be construed to override any requirement under the Code

⁹Cooperation also includes providing English translations, as reasonably requested by the Secretary.

or regulations to substantiate any item. Accordingly, taxpayers must meet applicable substantiation requirements, whether generally imposed¹⁰ or imposed with respect to specific items, such as charitable contributions¹¹ or meals, entertainment, travel, and certain other expenses.¹² Substantiation requirements include any requirement of the Code or regulations that the taxpayer establish an item to the satisfaction of the Secretary.¹³ Taxpayers who fail to substantiate any item in accordance with the legal requirement of substantiation will not have satisfied the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return and will accordingly be unable to avail themselves of this provision regarding the burden of proof. Thus, if a taxpayer required to substantiate an item fails to do so in the manner required (or destroys the substantiation), this burden of proof provision is inapplicable.¹⁴

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

Further, the provision provides that, in any court proceeding, the Secretary must initially come forward with evidence that it is appropriate to apply a particular penalty to the taxpayer before the court can impose the penalty. This provision is not intended to require the Secretary to introduce evidence of elements such as reasonable cause or substantial authority. Rather, the Secretary must come forward initially with evidence regarding the appropriateness of applying a particular penalty to the taxpayer; if the taxpayer believes that, because of reasonable cause, substantial authority, or a similar provision, it is inappropriate to impose the penalty, it is the taxpayer's responsibility (and not the Secretary's obligation) to raise those issues.

Effective date.—The provision applies to court proceedings arising in connection with examinations commencing after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The provision applies to income,¹⁵ estate, gift, and generation-skipping transfer taxes, permanently (i.e., without the June 1, 2001 termination of some taxes as under the Senate amendment). The effective date is clarified by adding that in any case in which there is no examination, the provision applies to court proceedings arising in connection with taxable periods or events beginning or occur-

¹⁰See e.g., Sec. 6001 and Treas. Reg. sec. 1.6001-1 requiring every person liable for any tax imposed by this Title to keep such records as the Secretary may from time to time prescribe, and secs. 6038 and 6038A requiring United States persons to furnish certain information the Secretary may prescribe with respect to foreign businesses controlled by the U.S. person.

¹¹Sec. 170(a)(1) and (f)(8) and Treas. Reg. sec. 1.170A-13.

¹²Sec. 274(d) and Treas. Reg. sec. 1.274(d)-1, 1.274-5T, and 1.274-5A.

¹³For example, sec. 905(b) of the Code provides that foreign tax credits shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary all information necessary for the verification and computation of the credit. Instructions for meeting that requirement are set forth in Treas. Reg. sec. 1.905-2.

¹⁴If, however, the taxpayer can demonstrate that he had maintained the required substantiation but that it was destroyed or lost through no fault of the taxpayer, such as by fire or flood, existing tax rules regarding reconstruction of those records would continue to apply.

¹⁵For this purpose, self-employment taxes are treated as income taxes.

ring after the date of enactment. An audit is not the only event that would be considered an examination for purposes of this provision. For example, the matching of an information return against amounts reported on a tax return is intended to be an examination for purposes of this provision. Similarly, the review of a claim for refund prior to issuing that refund is also intended to be an examination for purposes of this provision.

B. Proceedings by Taxpayers

1. Expansion of authority to award costs and certain fees (sec. 311 of the House bill and sec. 3101 of the Senate amendment)

Present Law

Any person who substantially prevails in any action by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding. Reasonable administrative costs are defined as (1) any administrative fees or similar charges imposed by the IRS and (2) expenses, costs and fees related to attorneys, expert witnesses, and studies or analyses necessary for preparation of the case, to the extent that such costs are incurred before the earlier of the date of the notice of decision by IRS Appeals or the notice of deficiency. Net worth limitations apply.

Reasonable litigation costs include reasonable fees paid or incurred for the services of attorneys, except that the attorney's fees will not be reimbursed at a rate in excess of \$110 per hour (indexed for inflation) unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

Rule 68 of the Federal Rules of Civil Procedure (FRCP) provides a procedure under which a party may recover costs if the party's offer for judgment was rejected and the subsequent court judgment was less favorable to the opposing party than the offer. The offering party's costs are limited to the costs (excluding attorney's fees) incurred after the offer was made. The FRCP generally apply to tax litigation in the district courts and the United States Court of Federal Claims.

Code section 7431 permits the award of civil damages for unauthorized inspection or disclosure of return information. The Federal appellate courts are split over whether a party who substantially prevails over the United States in an action under Code section 7431 is eligible for an award of fees and reasonable costs.

House Bill

The House bill:

(1) Moves the point in time after which reasonable administrative costs can be awarded to the date on which the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals is sent;

(2) Provides that the difficulty of the issues presented on the unavailability of local tax expertise can be used to justify an award of attorney's fees of more than the statutory limit of \$110 per hour;

(3) Permits the award of reasonable attorney's fees to specified persons who represent for no more than a nominal fee a taxpayer who is a prevailing party; and

(4) Provides that in determining whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in other courts of appeal on substantially similar issues.

Effective date.—Costs incurred and services performed more than 180 days after the date of enactment.

Senate Amendment

The Senate amendment:

(1) Is the same as the House bill;

(2) Permits awards of reasonable attorney's fees by deleting the hourly rate caps (and the exceptions to those caps);

(3) Is the same as the House bill; and

(4) Is the same as the House bill.

In addition, the Senate amendment:

(5) Provides that if a taxpayer makes an offer after the taxpayer has a right to administrative review in the IRS Office of Appeals, the IRS rejects the offer, and later the IRS obtains a judgment against the taxpayer in an amount that is equal to or less than the taxpayer's offer for the amount of the tax liability (excluding interest), reasonable costs and attorney's fees from the date of the offer would be awarded; and

(6) Clarifies that the award of attorney's fees is permitted in actions for civil damages for unauthorized inspection or disclosure of taxpayer returns and return information.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that the conference agreement follows the House bill with respect to the hourly rate caps, with the following modification. The hourly rate is raised to \$125 per hour, which parallels the rate utilized under the Equal Access to Justice Act (the statute that authorizes the awarding of attorney's fees in non-tax Federal cases). This new cap will continue to be indexed for inflation (as under present law). With respect to the award of attorney's fees in unauthorized inspection and disclosure cases, the conferees wish to clarify that fees are payable by the United States only when the United States is the defendant and the plaintiff is a prevailing party. Also, individual defendants (such as State employees or contractors) may be liable for attorneys' fees and costs in cases where the United States is not a party, whenever they are found to have made a wrongful disclosure.

2. Civil damages for collection actions (sec. 312 of the House bill and sec. 3102 of the Senate amendment)

Present Law

A taxpayer may sue the United States for up to \$1 million of civil damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or Treasury regulations in connection with the collection of Federal tax with respect to the taxpayer.

House Bill

The House bill permits up to \$100,000 in civil damages caused by an officer or employee of the IRS who negligently disregards provisions of the Internal Revenue Code or Treasury regulations in connection with the collection of Federal tax with respect to the taxpayer.

Effective date.—Actions of officers or employees of the IRS occurring after the date of enactment.

Senate Amendment

Same as the House bill, except that the provision also permits up to \$1 million in civil damages caused by an officer or employee of the IRS who willfully violates provisions of the Bankruptcy Code relating to automatic stays or discharges. The provision also provides that persons other than the taxpayer may sue for civil damages for unauthorized collection actions.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Increase in size of cases permitted on small case calendar (sec. 313 of the House bill and sec. 3103 of the Senate amendment)

Present Law

Taxpayers may choose to contest many tax disputes in the Tax Court. Special small case procedures apply to disputes involving \$10,000 or less, if the taxpayer chooses to utilize these procedures (and the Tax Court concurs). The IRS cannot require the taxpayer to use the small case procedures. The Tax Court generally concurs with the taxpayer's request to use the small case procedures, unless it decides that the case involves an issue that should be heard under the normal procedures. After the case has commenced, the Tax Court may order that the small case procedures should be discontinued only if (1) there is reason to believe that the amount in controversy will exceed \$10,000 or (2) justice would require the change in procedure.

House Bill

The House bill increases the cap for small case treatment from \$10,000 to \$25,000.

Effective date.—Proceedings commenced after the date of enactment.

Senate Amendment

The Senate amendment increases the cap for small case treatment from \$10,000 to \$50,000.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees recognize that an increase of this size may encompass a small number of cases of significant precedential value. Accordingly, the conferees anticipate that the Tax Court will carefully consider (1) IRS objections to small case treatment, such as objections based upon the potential precedential value of the case, as well as (2) the financial impact on the taxpayer, including additional legal fees and costs, of not utilizing small case treatment.

4. Expansion of Tax Court jurisdiction to responsible person penalties (sec. 3104 of the Senate amendment)

Present Law

In general, employers are required to withhold income taxes and social security taxes from their employee's wages. These withheld taxes constitute a trust in favor of the United States from the time that the employer deducts them from the employee's wages, and the employer is liable to the government for the payment of such taxes. All persons considered responsible for the withholding and payment of taxes are subject to a penalty equal to the amount of taxes due where the employer fails to turn over such funds to the government (the "responsible person" penalty, also known as the "100 percent" penalty). Generally, the determination of whether a person is a "responsible person" is a question of the person's status, duty, and authority in the context of the business which has failed to collect and pay over taxes required to be withheld. A responsible person penalty may also be imposed on a payroll lender.

The Tax Court has no jurisdiction over the determination of the correctness of the assessment of the responsible person penalty. Accordingly, as the Tax Court is the only pre-payment forum for the determination of tax liability, the imposition of the responsible person penalty can only be challenged in a refund suit in the appropriate district court or the U.S. Court of Federal Claims after payment of such penalty. The responsible person penalty is a divisible tax. Thus, unlike a refund suit for income taxes, a responsible person need not pay the full amount of the assessment to invoke the jurisdiction of the district court or the U.S.

Court of Federal Claims. Instead, the alleged responsible person may commence a refund suit after payment of the portion of the penalty attributable to one employee for one quarter.

House Bill

No provision.

Senate Amendment

The Senate amendment provides Tax Court jurisdiction over the "responsible person" penalty. Accordingly, the responsible person does not have to make a payment before challenging the imposition of the penalty.

Effective date.—Penalties imposed after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

5. Actions for refund with respect to certain estates which have elected the installment method of payment (sec. 371 of the House bill and 3105 of the Senate amendment)

Present Law

In general, the U.S. Court of Federal Claims and the U.S. district courts have jurisdiction over suits for the refund of taxes, as long as full payment of the assessed tax liability has been made. Under Code section 6166, if certain conditions are met, the executor of a decedent's estate may elect to pay the estate tax attributable to certain closely-held businesses over a 14-year period. Courts have held that U.S. district courts and the U.S. Court of Federal Claims do not have jurisdiction over claims for refunds by taxpayers deferring estate tax payments pursuant to section 6166 unless the entire estate tax liability has been paid. Under section 7479, the U.S. Tax Court has limited authority to provide declaratory judgments regarding initial or continuing eligibility for deferral under section 6166.

House Bill

The House bill grants the U.S. Court of Federal Claims and the U.S. district courts jurisdiction to determine the correct amount of estate tax liability (or refund) in actions brought by taxpayers deferring estate tax payments under section 6166, as long as certain conditions are met. In order to qualify for the provision: (1) the estate must have made an election pursuant to section 6166; (2) the estate must have fully paid each installment of principal and/or interest due (and all non-6166-related estate taxes due) before the date the suit is filed; (3) no portion of the payments due may have been accelerated; (4) there must be no suits for declaratory judgment pursuant to section 7479 pending; and (5) there must be no outstanding deficiency notices against the estate. In general, to the extent that a taxpayer has previously litigated its estate tax liability, the taxpayer would not be able to take advantage of this procedure under principles of res judicata. Taxpayers are not relieved of the liability to make any installment payments that become due during the pendency of the suit (i.e., failure to make such payments would subject the taxpayer to the existing provisions of section 6166(g)(3)).

The House bill further provides that once a final judgment has been entered by a district court or the U.S. Court of Federal Claims, the IRS is not permitted to collect any amount disallowed by the court, and any amounts paid by the taxpayer in excess of the amount the court finds to be currently due and payable are refunded to the taxpayer, with interest. Lastly, the provision provides that the two-year statute of limitations for filing a refund action is suspended during the pendency of any action brought by a taxpayer pursuant to section 7479 for a

declaratory judgment as to an estate's eligibility for section 6166.

Effective date.—Claims for refunds filed after the date of enactment.

Senate Amendment

Generally same as the House bill, with technical modifications.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Tax Court jurisdiction to review an adverse IRS determination of a bond issuer's tax-exempt status (sec. 3106 of the Senate amendment)

Present Law

Interest on debt incurred by States or local governments generally is excluded from gross income if the proceeds of the borrowing are used to carry out governmental functions of those entities and the debt is repaid with governmental funds.

A State or local government that seeks to issue bonds, the interest on which is intended to be excludable from gross income, can request a ruling from the IRS regarding the eligibility of such bonds for tax-exemption. The prospective issuer can challenge the IRS's determination (or failure to make a timely determination) in a declaratory judgment proceeding in the Tax Court. Because bondholders, not issuers, are the parties whose tax liability is affected, issuers are not allowed to litigate the tax-exempt status of the bonds directly after the bonds are issued.

House Bill

No provision.

Senate Amendment

The Senate amendment expands the declaratory judgment procedures currently applicable to prospective bond issuers to allow issuers to litigate in the Tax Court issues related to the tax-exempt status of outstanding bonds. In such cases, the issuer must provide adequate notice to outstanding bondholders, and the bondholders are authorized to intervene in court proceedings brought under this provision. The statute of limitations on assessment and collection of the tax liability of the bondholders is suspended during the pendency of the proceeding.

Effective date.—Determinations of tax-exempt status made after the date of enactment. In the case of a determination under a technical advice memorandum the public release of which occurred within one year of the date of enactment, a pleading may be filed not later than 90 days after the date of enactment.

Conference Agreement

In lieu of the Senate amendment provision, the conference agreement directs the Internal Revenue Service to modify its administrative procedures to allow tax-exempt bond issuers examined by the IRS to appeal adverse examination determinations to the Appeals Division of the IRS as a matter of right. Because of the complexity of the issues involved, the IRS is directed to provide that these appeals will be heard by senior appeals officers having experience in resolving complex cases.

The conferees further express their intent that Congress will evaluate judicial remedies in future legislation once the IRS's tax-exempt bond examination program has developed more fully and the Congress is better able to ensure that any such future measure protects all parties in interest to these determinations (i.e., issuers, bondholders, conduit borrowers, and the Federal Government).

Effective date.—The direction to the IRS is effective on the date of enactment.

7. Civil action for release of erroneous lien (sec. 3107 of the Senate amendment)

Present Law

Prior to 1995, the provisions governing jurisdiction over refund suits had generally been interpreted to apply only if an action was brought by the taxpayer against whom tax was assessed. Remedies for third parties from whom tax was collected (rather than assessed) were found in other provisions of the Internal Revenue Code. The Supreme Court has held that a third party who paid another person's tax under protest to remove a lien on the third party's property could bring a refund suit, because she had no other adequate administrative or judicial remedy. The Supreme Court held that parties who are forced to pay another's tax under duress could bring a refund suit, because no other judicial remedy was adequate.

House Bill

No provision.

Senate Amendment

The Senate amendment creates an administrative procedure permitting a record owner of property against which a Federal tax lien has been filed to obtain a certificate of discharge of property from the lien as a matter of right. The third party is required to apply to the Secretary of the Treasury for such a certificate and either to deposit cash or to furnish a bond sufficient to protect the lien interest of the United States.

The Senate amendment also establishes a judicial cause of action for third parties challenging a lien. The period within which such an action must be commenced is 120 days after the date the certificate of discharge is issued to ensure an early resolution of the parties' interests.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

C. Relief for Innocent Spouses and for Taxpayers Unable to Manage Their Financial Affairs Due to Disabilities

1. Relief for innocent spouses (sec. 321 of the House bill and sec. 3201 of the Senate amendment)

Present Law

Under present law, relief from liability for tax, interest and penalties is available for "innocent spouses" in certain circumstances. To qualify for such relief, the innocent spouse must establish: (1) that a joint return was made; (2) that an understatement of tax, which exceeds the greater of \$500 or a specified percentage of the innocent spouse's adjusted gross income for the preadjustment (most recent) year, is attributable to a grossly erroneous item of the other spouse; (3) that in signing the return, the innocent spouse did not know, and had no reason to know, that there was an understatement of tax; and (4) that taking into account all the facts and circumstances, it is inequitable to hold the innocent spouse liable for the deficiency in tax. The specified percentage of adjusted gross income is 10 percent if adjusted gross income is \$20,000 or less. Otherwise, the specified percentage is 25 percent.

The proper forum for contesting the Secretary's denial of innocent spouse relief is determined by whether an underpayment is asserted or the taxpayer is seeking a refund of overpaid taxes. Accordingly, the Tax Court may not have jurisdiction to review all denials of innocent spouse relief.

House Bill

The House bill generally makes innocent spouse status easier to obtain. The bill eliminates all of the understatement thresholds and requires only that the understatement of

tax be attributable to an erroneous (and not just a grossly erroneous) item of the other spouse.

The House bill provides that innocent spouse relief may be provided on an apportioned basis. A spouse may be relieved of liability for the portion of an understatement of tax even if the spouse knew or had reason to know of other understatements of tax on the same return.

The House bill specifically provides that the Tax Court has jurisdiction to review any denial of innocent spouse relief. Except for termination and jeopardy assessments, the Secretary may not levy or proceed in court to collect any tax from a taxpayer claiming innocent spouse status with regard to such tax until the expiration of the 90-day period in which such taxpayer may petition the Tax Court or, if the Tax Court considers such petition, before the decision of the Tax Court has become final. The running of the statute of limitations is suspended in such situations with respect to the spouse claiming innocent spouse status.

The House bill requires the Secretary of the Treasury to develop a separate form with instructions for taxpayers to use in applying for innocent spouse relief within 180 days from the date of enactment. An innocent spouse seeking relief under this provision must claim innocent spouse status with regard to any assessment not later than two years after the date of such assessment.

Effective date.—Understatements with respect to taxable years beginning after the date of enactment.

Senate Amendment

In general

The Senate amendment modifies the innocent spouse provisions to permit a spouse to elect to limit his or her liability for unpaid taxes on a joint return to the spouse's separate liability amount. In the case of a deficiency arising from a joint return, a spouse could elect to be liable only to the extent that items giving rise to the deficiency are allocable to the spouse. The separate liability election also applies in situations where the tax shown on a joint return is not paid with the return. In this case, the amount determined under the separate liability election equals the amount that would have been reported by the electing spouse on a separate return. However, if any item of credit or deduction would be disallowed solely because a separate return is filed, the item of credit or deduction will be computed without regard to such prohibition. Special rules apply to prevent the inappropriate use of the election. The separate liability election may not be used to create a refund, or to direct a refund to a particular spouse.

Items are generally allocated between spouses in the same manner as they would have been allocated had the spouses filed separate returns. The Secretary may prescribe other methods of allocation by regulation. The allocation of items is to be accomplished without regard to community property laws.

The election applies to all unpaid taxes under subtitle A of the Internal Revenue Code, including the income tax and the self-employment tax. The election may be made at any time not later than 2 years after collection activities begin with respect to the electing spouse. It is intended that the 2 year period not begin until collection activities have been undertaken against the electing spouse that have the effect of giving the spouse notice of the IRS' intention to collect the joint liability from such spouse. For example, garnishment of wages or a notice of intent to levy against the property of the electing spouse would constitute collection activity against the electing spouse. The

mailing of a notice of deficiency and demand for payment to the last known address of the electing spouse, addressed to both spouses, would not.

The Tax Court has jurisdiction of disputes arising from the separate liability election. For example, a spouse who makes the separate liability election may petition the Tax Court to determine the limits on liability applicable under this provision. The Tax Court is authorized to establish rules that would allow the Secretary of the Treasury and the electing spouse to require, with adequate notice, the other spouse to become a party to any proceeding before the Tax Court. The Secretary of the Treasury is required to develop a separate form with instructions for taxpayers to use in electing to limit liability.

The Internal Revenue Service is required to notify all taxpayers who have filed joint returns of their rights to elect to limit their joint and several liability under this provision. It is expected that notice will appear in appropriate IRS publications, including IRS Publication 1, and in collection related notices sent to taxpayers. In addition, the Internal Revenue Service should, whenever practicable, send appropriate notifications separately to each spouse.

Effective date

The Senate amendment applies to any liability for tax arising after the date of enactment and any liability for tax arising on or before such date, but remaining unpaid as of such date.

The period in which an election may be made under the provision will not expire before the later of the date that is 2 years after the date of enactment or 2 years after the date of the first collection action that has the effect of giving the spouse notice of the IRS' intention to collect the joint liability from the spouse is undertaken after the date of enactment. This rule does not extend the statute of limitations.

An individual may elect under the provision without regard to whether such individual has previously been denied innocent spouse relief under present law.

Conference Agreement

In general

The conference agreement follows the Senate amendment with respect to deficiencies of a taxpayer who is no longer married to, is legally separated from, or has been living apart for at least 12 months from the person with whom the taxpayer originally filed the joint return. The conference agreement also includes the provision in the House bill expanding the circumstances in which innocent spouse relief is available. Taxpayers, whether or not eligible to make the separate liability election, may be granted innocent spouse relief where appropriate. In addition, the conference agreement authorizes the Secretary to provide equitable relief in appropriate situations. The conference agreement follows the House bill and the Senate amendment in establishing jurisdiction in the Tax Court over disputes arising in this area.

Deficiencies of certain taxpayers

The conference agreement follows the Senate amendment with respect to deficiencies of a taxpayer who, at the time of election, is no longer married¹⁶ to, is legally separated from, or has been living apart for at least 12 months from the person with whom the taxpayer originally filed the joint return. Such taxpayers may elect to limit their liability for any deficiency limited to the portion of the deficiency that is attributable to items allocable to the taxpayer.

For example, a deficiency is assessed after IRS audit of a joint return. The deficiency

¹⁶For the purpose of this rule, a taxpayer is no longer married if he or she is widowed.

relates to income earned by the husband that was not reported on the return. If the spouses who joined in the return are no longer married, are legally separated, or have lived apart for at least 12 months, either may elect limited liability under this provision. If the wife elects, she would owe none of the deficiency. The deficiency would be the sole responsibility of the husband whose income gave rise to the deficiency.

If the deficiency relates to the items of both spouses, the separate liability for the deficiency is allocated between the spouses in the same proportion as the net items taken into account in determining the deficiency. For example, a deficiency is assessed that is attributable to \$70,000 of unreported income allocable to the husband and the disallowance of a \$30,000 miscellaneous itemized deduction allocable to the wife. If the spouses who joined in the return are no longer married, are legally separated, or have lived apart for at least 12 months, either may elect limited liability under this provision. If either the husband and wife elect, the husband's liability would be limited to 70 percent of the deficiency (if he elects) and the wife's liability limited to 30 percent (if she elects). This would be the case even if a portion of the miscellaneous itemized deductions had been disallowed under section 67(a). The election is required in order to limit liability. If either spouse fails to elect, that spouse would be liable for the full amount of the deficiency, unless reduced by innocent spouse relief or pursuant to the grant of authority to the Secretary to provide equitable relief.

If the deficiency arises as a result of the denial of an item of deduction or credit, the amount of the deficiency allocated to the spouse to whom the item of deduction or credit is allocated is limited to the amount of income or tax allocated to such spouse that was offset by the deduction or credit. The remainder of the liability is allocated to the other spouse to reflect the fact that income or tax allocated to that spouse was originally offset by a portion of the disallowed deduction or credit.

For example, a married couple files a joint return with wage income of \$100,000 allocable to the wife and \$30,000 of self employment income allocable to the husband. On examination, a \$20,000 deduction allocated to the husband is disallowed, resulting in a deficiency of \$5,600. Under the provision, the liability is allocated in proportion to the items giving rise to the deficiency. Since the only item giving rise to the deficiency is allocable to the husband, and because he reported sufficient income to offset the item of deduction, the entire deficiency is allocated to the husband and the wife has no liability with regard to the deficiency, regardless of the ability of the IRS to collect the deficiency from the husband.

If the joint return had shown only \$15,000 (instead of \$30,000) of self employment income for the husband, the income offset limitation rule discussed above would apply. In this case, the disallowed \$20,000 deduction entirely offsets the \$15,000 of income of the husband, and \$5,000 remains. This remaining \$5,000 of the disallowed deduction offsets income of the wife. The liability for the deficiency is therefore divided in proportion to the amount of income offset for each spouse. In this example, the husband is liable for 3/4 of the deficiency (\$4,200), and the wife is liable for the remaining 1/4 (\$1,400).

Where a deficiency is attributable to the disallowance of a credit, or to any tax other than regular or alternative minimum income tax, the portion of the deficiency attributable to such credit or other tax is considered first. For example, on examination a deficiency of \$10,000 (\$2,800 of self-employment

tax and \$7,200 of income tax) is determined to be attributable to \$20,000 of unreported self-employment income of the husband and a disallowed itemized deduction of \$5,000 allocable to the wife. The \$2,800 of deficient self-employment taxes is first allocated to the husband, and the remaining \$7,200 of income tax deficiency is allocated 80 percent to the husband and 20 percent to the wife.

The special rules included in the Senate bill to prevent the inappropriate use of the election are included in the conference agreement.

First, if the IRS demonstrates that assets were transferred between the spouses in a fraudulent scheme joined in by both spouses, neither spouse is eligible to make the election under the provision (and consequently joint and several liability applies to both spouses).

Second, if the IRS proves that the electing spouse had actual knowledge that an item on a return is incorrect, the election will not apply to the extent any deficiency is attributable to such item. Such actual knowledge must be established by the evidence and shall not be inferred based on indications that the electing spouse had a reason to know.

The rule that the election will not apply to the extent any deficiency is attributable to an item the electing spouse had actual knowledge of is expected to be applied by treating the item as fully allocable to both spouses. For example a married couple files a joint return with wage income of \$150,000 allocable to the wife and \$30,000 of self employment income allocable to the husband. On examination, an additional \$20,000 of the husband's self-employment income is discovered, resulting in a deficiency of \$9,000. The IRS proves that the wife had actual knowledge that \$5,000 of this additional self-employment income, but had no knowledge of the remaining \$15,000. In this case, the husband would be liable for the full amount of the deficiency, since the item giving rise to the deficiency is fully allocable to him. In addition, the wife would be liable for the amount that would have been calculated as the deficiency based on the \$5,000 of unreported income of which she had actual knowledge. The IRS would be allowed to collect that amount from either spouse, while the remainder of the deficiency could be collected from only the husband.

Third, the portion of the deficiency for which the electing spouse is liable is increased by the value of any disqualified assets received from the other spouse. Disqualified assets include any property or right to property that was transferred to an electing spouse if the principle purpose of the transfer is the avoidance of tax (including the avoidance of payment of tax). A rebuttable presumption exists that a transfer is made for tax avoidance purposes if the transfer was made less than one year before the earlier of the payment due date or the date of the notice of proposed deficiency. The rebuttable presumption does not apply to transfers pursuant to a decree of divorce or separate maintenance. The presumption may be rebutted by a showing that the principal purpose of the transfer was not the avoidance of tax or the payment of tax.

Other deficiencies

The conference agreement also includes the provision in the House bill modifying innocent spouse relief. Taxpayers who do not make the separate liability election may be eligible for innocent spouse relief. For example, a taxpayer may be ineligible to make the separate liability election for a deficiency because he or she is not widowed, divorced, legally separated, or living apart (for at least 12 months) from the person with

whom the taxpayer originally joined in filing the joint return. Such a taxpayer may apply for relief of any deficiency that is attributable to an erroneous item of the other spouse, provided he or she did not know or have reason to know of the understatement of tax and it would be inequitable to hold the taxpayer responsible for the deficiency. The election is required to be made no later than the date that is two years after the Secretary has begun collection actions with respect to the individual. The rule in the House bill allowing innocent spouse relief to be provided on an apportioned basis is included in the conference agreement.

Other circumstances, including tax shown on a return but not paid

The conference agreement does not include the portion of the Senate amendment that could provide relief in situations where tax was shown on a joint return, but not paid with the return. The conferees intend that the Secretary will consider using the grant of authority to provide equitable relief in appropriate situations to avoid the inequitable treatment of spouses in such situations. For example, the conferees intend that equitable relief be available to a spouse that does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse's benefit.

The conferees do not intend to limit the use of the Secretary's authority to provide equitable relief to situations where tax is shown on a return but not paid. The conferees intend that such authority be used where, taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return. The conferees intend that relief be available where there is both an understatement and an underpayment of tax.

Procedural rules

The conference agreement follows the House bill and the Senate amendment with respect to procedural rules, including the jurisdiction of the Tax Court to review matters relating to this provision. The conference agreement also follows the Senate amendment in requiring the IRS to notify taxpayers of their rights under this provision, and, whenever practicable, to send notifications separately to each spouse.

Effective date

The conference agreement follows the Senate amendment. The separate liability election, expanded innocent spouse relief and authority to provide equitable relief all apply to liabilities for tax arising after the date of enactment, as well as any liability for tax arising on or before the date of enactment that remains unpaid on the date of enactment. The applicable 2-year election periods do not expire before the date that is two years after the first collection activity taken by the IRS after the date of enactment. The Secretary is required to develop a separate form for electing innocent spouse relief within 180 days after the date of enactment.

2. Suspension of statute of limitations on filing refund claims during periods of disability (sec. 322 of the House bill and sec. 3202 of the Senate amendment)

Present Law

In general, a taxpayer must file a refund claim within three years of the filing of the return or within two years of the payment of the tax, whichever period expires later (if no return is filed, the two-year limit applies) (sec. 6511(a)). A refund claim that is not filed within these time periods is rejected as untimely.

There is no explicit statutory rule providing for equitable tolling of the statute of

limitations. The U.S. Supreme Court has held that Congress did not intend the equitable tolling doctrine to apply to the statutory limitations of section 6511 on the filing of tax refund claims.

House Bill

The House bill permits equitable tolling of the statute of limitations for refund claims of an individual taxpayer during any period of the individual's life in which he or she is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. Tolling does not apply during periods in which the taxpayer's spouse or another person is authorized to act on the taxpayer's behalf in financial matters.

Effective date.—The provision applies to periods of disability before, on, or after the date of enactment but does not apply to any claim for refund or credit that (without regard to the provision) is barred by the operation of any law, including the statute of limitations, as of January 1, 1998.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Effective date.—The provision applies to periods of disability before, on, or after the date of enactment but does not apply to any claim for refund or credit that (without regard to the provision) is barred by the operation of any law, including the statute of limitations, as of the date of enactment.

D. Provisions Relating to Interest and Penalties

1. Elimination of interest differential on overlapping periods of interest on income tax overpayments and underpayments (sec. 331 of the House bill and sec. 3301 of the Senate amendment)

Present Law

A taxpayer that underpays its taxes is required to pay interest on the underpayment at a rate equal to the Federal short term interest rate plus three percentage points. A special "hot interest" rate equal to the Federal short term interest rate plus five percentage points applies in the case of certain large corporate underpayments.

A taxpayer that overpays its taxes receives interest on the overpayment at a rate equal to the Federal short term interest rate plus two percentage points. In the case of corporate overpayments in excess of \$10,000, this is reduced to the Federal short term interest rate plus one-half of a percentage point.

If a taxpayer has an underpayment of tax from one year and an overpayment of tax from a different year that are outstanding at the same time, the IRS will typically offset the overpayment against the underpayment and apply the appropriate interest to the resulting net underpayment or overpayment. However, if either the underpayment or overpayment has been satisfied, the IRS will not typically offset the two amounts, but rather will assess or credit interest on the full underpayment or overpayment at the underpayment or overpayment rate. This has the effect of assessing the underpayment at the higher underpayment rate and crediting the overpayment at the lower overpayment rate. This results in the taxpayer being assessed a net interest charge, even if the amounts of the overpayment and underpayment are the same.

The Secretary has the authority to credit the amount of any overpayment against any liability under the Code. Congress has previously directed the Internal Revenue Serv-

ice to implement procedures for "netting" overpayments and underpayments to the extent a portion of tax due is satisfied by a credit of an overpayment.

House Bill

The House bill establishes a net interest rate of zero where interest is payable and allowable on equivalent amounts of overpayment and underpayment of income tax that exist for any period. Each overpayment and underpayment is considered only once in determining whether equivalent amounts of overpayment and underpayment exist. The special rules that increase the interest rate paid on large corporate underpayments and decrease the interest rate received on corporate underpayments in excess of \$10,000 do not prevent the application of the net zero rate. The provision applies to income taxes and self-employment taxes.

Effective date.—Interest for calendar quarters beginning after the date of enactment.

Senate Amendment

Generally same as the House bill, except that the Senate amendment applies where interest is payable and allowable on equivalent amounts of overpayment and underpayment of any taxes imposed by Title 26 (the Internal Revenue Code), and not only income taxes.

Effective date.—Same as the House bill. In addition, the provision applies to interest for periods beginning before the date of enactment if: (1) the statute of limitations has not expired with respect to either the underpayment or overpayment; (2) the taxpayer identifies the periods of underpayment and overpayment for which the zero rate applies; and (3) on or before December 31, 1999, the taxpayer asks the Secretary to apply the zero rate.

Conference Agreement

The conference agreement follows the Senate amendment. It is anticipated that the Secretary will take into account interest paid on previously determined deficiencies or refunds for the purpose of determining the rate of interest under this provision without regard to whether the underpayments or overpayments are currently outstanding. It is also anticipated that where interest is both payable from and allowable to an individual taxpayer for the same period, the Secretary will take all reasonable efforts to offset the liabilities, rather than process them separately using the net interest rate of zero. Where interest is payable and allowable on an equivalent amount of underpayment and overpayment that is attributable to a taxpayer's interest in a pass-thru entity (e.g., a partnership), the conferees intend that the benefits of the provision apply.

2. Increase in overpayment rate payable to taxpayers other than corporations (sec. 332 of the House bill and sec. 3302 of the Senate amendment)

Present Law

A taxpayer that underpays its taxes is required to pay interest on the underpayment at a rate equal to the Federal short-term interest rate (AFR) plus three percentage points. A taxpayer that overpays its taxes receives interest on the overpayment at a rate equal to the Federal short-term interest rate (AFR) plus two percentage points.

House Bill

The House bill provides that the overpayment interest rate will be AFR plus three percentage points, except that for corporations, the rate remains at AFR plus two percentage points.

Effective date.—Interest for calendar quarters beginning after the date of enactment.

Senate Amendment

Same as the House bill, except for the effective date.

Effective date.—Interest for the second and succeeding calendar quarters beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Mitigation of penalty for individual's failure to pay during period of installment agreement (sec. 376 of the House bill and sec. 3303 of the Senate amendment)

Present Law

Taxpayers who fail to pay their taxes are subject to a penalty of one-half percent per month on the unpaid amount, up to a maximum of 25 percent. If the liability is shown on the return, the penalty begins to accrue on the date prescribed for payment of the tax (with regard to extensions). If the liability should have been shown on the return but was not, the penalty generally begins to accrue after the date that is 21 days from the date of the IRS notice and demand for payment with respect to such liability. Taxpayers who make installment payments pursuant to an agreement with the IRS are also subject to this penalty.

House Bill

The House bill provides that the penalty for failure to pay taxes is not imposed with respect to the tax liability of an individual with respect to any month in which an installment payment agreement with the IRS is in effect to the extent that doing so would result in the cumulative penalty percentage exceeding 9.5 percent (instead of 25 percent).

Effective date.—Installment agreement payments made after the date of enactment.

Senate Amendment

The Senate amendment provides that the penalty for failure to pay taxes is not imposed with respect to the tax liability of an individual for any month in which an installment payment agreement with the IRS is in effect, provided that the individual filed the tax return in a timely manner (including extensions).

Effective date.—Installment agreement payments made after December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, except that the rate of the penalty is half the usual rate (0.25 percent instead of 0.5 percent) for any month in which an installment payment agreement with the IRS is in effect.

4. Mitigation of failure to deposit penalty (sec. 3304 of the Senate amendment)

Present Law

Deposits of payroll taxes are allocated to the earliest period for which such a deposit is due. If a taxpayer misses or makes an insufficient deposit, later deposits will first be applied to satisfy the shortfall for the earlier period; the remainder is then applied to satisfy the obligation for the current period. Cascading penalties may result as payments that would otherwise be sufficient to satisfy current liabilities are applied to satisfy earlier shortfalls. The Secretary may waive the failure to make deposit penalty for inadvertent failures by first-time depositors of employment taxes.

House Bill

No provision.

Senate Amendment

The Senate amendment allows the taxpayer to designate the period to which each deposit is applied. The designation must be made no later than 90 days after the related IRS penalty notice. The provision also extends the authorization to waive the failure to deposit penalty to the first deposit a taxpayer is required to make after the taxpayer

is required to change the frequency of the taxpayer's deposits.

Effective date.—Deposits made more than 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications. Also, the designation must be made during the 90 days immediately following the sending of the related IRS penalty notice. The conference agreement also provides that, for deposits required to be made after December 31, 2001, any deposit is to be applied to the most recent period to which the deposit relates, unless the taxpayer explicitly designates otherwise.

5. Suspension of interest and certain penalties if Secretary fails to contact individual taxpayer (sec. 3305 of the Senate amendment)

Present Law

In general, interest and penalties accrue during periods for which taxes are unpaid without regard to whether the taxpayer is aware that there is tax due.

House Bill

No provision.

Senate Amendment

The Senate amendment suspends the accrual of penalties and interest after 1 year if the IRS has not sent the taxpayer a notice of deficiency within 1 year following the date which is the later of (1) the original due date of the return or (2) the date on which the individual taxpayer timely filed the return. The suspension only applies to taxpayers who file a timely tax return. The Senate amendment applies only to individuals and does not apply to the failure to pay penalty, in the case of fraud, or with respect to criminal penalties. Interest and penalties resume 21 days after the IRS sends a notice and demand for payment to the taxpayer.

Effective date.—Taxable years ending after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications. With respect to taxable years beginning before January 1, 2004, the 1-year period is increased to 18 months. Interest and penalties are suspended if the IRS fails to send a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. Interest and penalties resume 21 days after the IRS sends that notice to the taxpayer. The provision is applied separately with respect to each item or adjustment. The provision does not apply where a taxpayer has self-assessed the tax.

For example, if the IRS sends a math error notice to a taxpayer 2 months after the return is filed and also sends a notice of deficiency related to a different item 2 years later, the provision applies to the item reflected on the second notice (notwithstanding that the first notice was sent within the applicable time period).

6. Procedural requirements for imposition of penalties and additions to tax (sec. 3306 of the Senate amendment)

Present Law

Present law does not require the IRS to show how penalties are computed on the notice of penalty. In some cases, penalties may be imposed without supervisory approval.

House Bill

No provision.

Senate Amendment

The Senate amendment requires that each notice imposing a penalty include the name of the penalty, the code section imposing the penalty, and a computation of the penalty.

The Senate amendment also requires the specific approval of IRS management to assess all non-computer generated penalties unless excepted. This provision does not apply to failure to file penalties, failure to pay penalties, or to penalties for failure to pay estimated tax.

Effective date.—Notices issued, and penalties assessed, more than 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Notices issued, and penalties assessed after December 31, 2000.

7. Personal delivery of notice of penalty under section 6672 (sec. 3307 of the Senate amendment)

Present Law

Any person who is required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to do so is liable for a penalty equal to the amount of the tax. Before the IRS may assess any such "100-percent penalty," it must mail a written preliminary notice informing the person of the proposed penalty to that person's last known address. The mailing of such notice must precede any notice and demand for payment of the penalty by at least 60 days. The statute of limitations on assessments shall not expire before the date 90 days after the date on which the notice was mailed. These restrictions do not apply if the Secretary finds the collection of the penalty is in jeopardy.

House Bill

No provision.

Senate Amendment

The Senate amendment permits in person delivery, as an alternative to delivery by mail, of a preliminary notice that the IRS intends to assess a 100-percent penalty.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Notice of interest charges (sec. 3308 of the Senate amendment)

Present Law

Taxpayer generally must pay interest on amounts due to the IRS.

House Bill

No provision.

Senate Amendment

The Senate amendment requires every IRS notice that includes an amount of interest required to be paid by the taxpayer that is sent to an individual taxpayer to include a detailed computation of the interest charged and a citation to the Code section under which such interest is imposed.

Effective date.—Notices issued after June 30, 2000.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Notices issued after December 31, 2000.

9. Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas (sec. 3309 of the Senate amendment)

Present Law

In the case of a Presidentially declared disaster, the Secretary of the Treasury has the authority to postpone some tax-related deadlines, but there is no authority to abate interest.

Under a provision of the Taxpayer Relief Act of 1997, if the Secretary of the Treasury extends the filing date of an individual tax

return for individuals living in an area that has been declared a disaster area by the President during 1997, no interest is charged as a result of the failure of the individual taxpayer to file an individual tax return, or to pay the taxes shown on such return, during the extension.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that taxpayers located in a Presidentially declared disaster area do not have to pay interest on taxes due for the length of any extension for filing their tax returns granted by the Secretary of the Treasury.

Effective date.—Disasters declared after December 31, 1996, with respect to taxable years beginning after December 31, 1996.

Conference Agreement

The conference agreement follows the Senate amendment.

This provision is designated as emergency legislation under section 252(e) of the Balanced Budget and Emergency Deficit Control Act.

Effective date.—Disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997. The conferees have modified the effective date because section 915 of The Taxpayer Relief Act of 1997 already applies to 1997 disasters. The conferees intend that no gap between the two provisions exists.

E. Protections for Taxpayers Subject to Audit or Collection Activities

1. Due process in IRS collection actions (sec. 3401 of the Senate amendment)

Present Law

Levy is the IRS's administrative authority to seize a taxpayer's property to pay the taxpayer's tax liability. The IRS is entitled to seize a taxpayer's property by levy if the Federal tax lien has attached to such property. The Federal tax lien arises automatically where (1) a tax assessment has been made, (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment, and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.

The IRS may collect taxes by levy upon a taxpayer's property or rights to property (including accrued salary and wages) if the taxpayer neglects or refuses to pay the tax within 10 days after notice and demand that the tax be paid. Notice of the IRS's intent to collect taxes by levy must be given no less than 30 days (90 days in the case of a life insurance contract) before the day of the levy. The notice of levy must describe the procedures that will be used, the administrative appeals available to the taxpayer and the procedures relating to such appeals, the alternatives available to the taxpayer that could prevent levy, and the procedures for redemption of property and release of liens.

The effect of a levy on salary or wages payable to or received by a taxpayer is continuous from the date the levy is first made until it is released.

If the IRS district director finds that the collection of any tax is in jeopardy, collection by levy may be made without regard to either notice period. A similar rule applies in the case of termination assessments.

House Bill

No provision.

Senate Amendment

The Senate amendment establishes formal procedures designed to insure due process where the IRS seeks to collect taxes by levy (including by seizure). The due process procedures also apply after the Federal tax lien

attaches, but before the notice of the Federal tax lien has been given to the taxpayer.

As under present law, notice of the intent to levy must be given at least 30 days (90 days in the case of a life insurance contract) before property can be seized or salary and wages garnished. During the 30-day (90-day) notice period, the taxpayer may demand a hearing to take place before an appeals officer who has had no prior involvement in the taxpayer's case. If, within that period, the taxpayer demands a hearing, the proposed collection action may not proceed until the hearing has concluded and the appeals officer has issued his or her determination.

During the hearing, the IRS is required to verify that all statutory, regulatory, and administrative requirements for the proposed collection action have been met. IRS verifications are expected to include (but not be limited to) showings that:

(1) the revenue officer recommending the collection action has verified the taxpayer's liability;

(2) the estimated expenses of levy and sale will not exceed the value of the property to be seized;

(3) the revenue officer has determined that there is sufficient equity in the property to be seized to yield net proceeds from sale to apply to the unpaid tax liabilities; and

(4) with respect to the seizure of the assets of a going business, the revenue officer recommending the collection action has thoroughly considered the facts of the case, including the availability of alternative collection methods, before recommending the collection action.

The taxpayer (or affected third party) is allowed to raise any relevant issue at the hearing. Issues eligible to be raised include (but are not limited to):

(1) challenges to the underlying liability as to existence or amount;

(2) appropriate spousal defenses;

(3) challenges to the appropriateness of collection actions; and

(4) collection alternatives, which could include the posting of a bond, substitution of other assets, an installment agreement or an offer-in-compromise.

Once the taxpayer has had a hearing with respect to an issue, the taxpayer would not be permitted to raise the same issue in another hearing.

The determination of the appeals officer is to address whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that the collection action be no more intrusive than necessary.

The taxpayer may contest the determination of the appellate officer in Tax Court by filing a petition within 30 days of the date of the determination. The IRS may not take any collection action pursuant to the determination during such 30-day period or while the taxpayer's contest is pending in Tax Court.

IRS Appeals would retain jurisdiction over its determinations. IRS Appeals could enter an order requiring the IRS collection division to adhere to the original determination. In addition, the taxpayer would be allowed to return to IRS Appeals to seek a modification of the original determination based on any change of circumstances.

In the case of a continuous levy, the due process procedures would apply to the original imposition of the levy.

This provision does not apply in the case of jeopardy and termination assessments. Jeopardy and termination assessments would be subject to post-seizure review as part of the Appeals determination hearing as well as through any existing judicial procedure. A jeopardy or termination assessment must be approved by the IRS District Counsel respon-

sible for the case. Failure to obtain District Counsel approval would render the jeopardy or termination assessment void.

Effective date.—The due process procedures apply to collection actions initiated more than six months after the date of enactment.

Conference Agreement

Liens

The conference agreement generally follows the Senate amendment, except that taxpayers would have a right to a hearing after the Notice of Lien is filed. The IRS would be required to notify the taxpayer that a Notice of Lien had been filed within 5 days after filing. During the 30-day period beginning with the mailing or delivery of such notification, the taxpayer may demand a hearing before an appeals officer who has had no prior involvement with the taxpayer's case. In general, any issue relevant to the appropriateness of the proposed collection against the taxpayer can be raised at this hearing. For example, the taxpayer can request innocent spouse status, make an offer-in-compromise, request an installment agreement or suggest which assets should be used to satisfy the tax liability. However, the validity of the tax liability can be challenged only if the taxpayer did not actually receive the statutory notice of deficiency or has not otherwise had an opportunity to dispute the liability. This hearing right applies only after the first Notice of Lien with regard to each tax liability is filed.

Levies

The conference agreement includes a modified form of the Senate amendment. The IRS would be required to provide the taxpayer with a "Notice of Intent to Levy," formally stating its intention to collect a tax liability by levy against the taxpayer's property or rights to property. The conferees intend that the Secretary have the discretion to provide the Notice of Intent to Levy in combination with the notice required by present law under section 6331(d). Service by registered or certified mail, return receipt requested would be required. The Notice of Intent to Levy would not be required to itemize the property the Secretary seeks to levy on.

Subject to the exceptions noted below, no levy could occur within the 30-day period beginning with the mailing of the "Notice of Intent to Levy." During that 30-day period, the taxpayer may demand a hearing before an appeals officer who has had no prior involvement with the taxpayer's case, other than in connection with a hearing after the filing of a notice of tax lien. If a hearing is requested within the 30-day period, no levy could occur until a determination by the appeals officer is rendered. In general, any issue that is relevant to the appropriateness of the proposed collection against the taxpayer can be raised at the pre-levy hearing. For example, the taxpayer can request innocent spouse status, make an offer-in-compromise, request an installment agreement or suggest which assets should be used to satisfy the tax liability. However, the validity of the tax liability can be challenged only if the taxpayer did not actually receive the statutory notice of deficiency or has not otherwise had an opportunity to dispute the liability.

If a return receipt is not returned, the Secretary may proceed to levy on the taxpayer's property or rights to property 30 days after the Notice of Intent to Levy was mailed. The Secretary must provide a hearing equivalent to the pre-levy hearing if later requested by the taxpayer. However, the Secretary is not required to suspend the levy process pending the completion of a hearing that is not requested within 30 days of the mailing of the Notice. If the taxpayer did not receive the

required notice and requests a hearing after collection activity has begun, then collection shall be suspended and a hearing provided to the taxpayer.

The conferees anticipate that the IRS will combine Notice of Intent to Levy and Notice of Lien hearings whenever possible. If multiple hearings are held, it is expected that, to the extent practicable, the same appellate officer will hear the taxpayer with regard to both lien and levy issues. If the taxpayer requests a hearing following receipt of a Notice of Lien or Notice of Intent to Levy and, prior to the date of the hearing, receives the other notice, the scheduled hearing will serve for both purposes and the taxpayer is obligated to raise all relevant issues at such hearing.

Judicial review

The conferees expect the appeals officer will prepare a written determination addressing the issues presented by the taxpayer and considered at the hearing. The determination of the appeals officer may be appealed to Tax Court or, where appropriate, the Federal district court. Where the validity of the tax liability was properly at issue in the hearing, and where the determination with regard to the tax liability is a part of the appeal, no levy may take place during the pendency of the appeal. The amount of the tax liability will in such cases be reviewed by the appropriate court on a de novo basis. Where the validity of the tax liability is not properly part of the appeal, the taxpayer may challenge the determination of the appeals officer for abuse of discretion. In such cases, the appeals officer's determination as to the appropriateness of collection activity will be reviewed using an abuse of discretion standard of review. Levies will not be suspended during the appeal if the Secretary shows good cause why the levy should be allowed to proceed.

No further hearings are provided under this provision as a matter of right. It is the responsibility of the taxpayer to raise all relevant issues at the time of the pre-levy hearing. A taxpayer could apply for consideration of new information, make an offer-in-compromise, request an installment agreement, or raise other considerations at any time before, during, or after the Notice of Intent to Levy hearing. However, after the 30 day period had expired, the IRS is not required to provide a hearing or delay any levy or sale of levied property. Nothing in this provision is intended to limit any remedy that is otherwise available under present law.

An exception to the general rule prohibiting levies during the 30-day period would apply in the case of state tax offset procedures, and in the case of jeopardy or termination assessments.

Prior judicial approval required for seizures of principal residences

No seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse, or minor child would be allowed without prior judicial approval. Notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. At the judicial hearing, the Secretary would be required to demonstrate (1) that the requirements of any applicable law or administrative procedure relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists.

Effective date

The provision is effective for collection actions initiated more than 180 days after the date of enactment.

2. Examination activities

a. Uniform application of confidentiality privilege to taxpayer communications with federally authorized practitioners (sec. 341 of the House bill and sec. 3411 of the Senate amendment)

Present Law

A common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client. Communications protected by the attorney-client privilege must be based on facts of which the attorney is informed by the taxpayer, for the purpose of securing the professional advice of the attorney. The privilege may not be claimed where the purpose of the communication is the commission of a crime or tort. The taxpayer must either be a client of the attorney or be seeking to become a client of the attorney.

The privilege of confidentiality applies only where the attorney is advising the client on legal matters. It does not apply in situations where the attorney is acting in other capacities. Thus, a taxpayer may not claim the benefits of the attorney-client privilege simply by hiring an attorney to perform some other function. For example, if an attorney is retained to prepare a tax return, the attorney-client privilege will not automatically apply to communications and documents generated in the course of preparing the return.

The privilege of confidentiality also does not apply where the communication is made for further communication to third parties. For example, information that is communicated to an attorney for inclusion in a tax return is not privileged because it is communicated for the purpose of disclosure. The privilege of confidentiality does not apply where an attorney is acting in another capacity, or where an attorney who is licensed to practice another profession is performing such other profession.

The attorney-client privilege is considered waived if the communication is voluntarily disclosed to anyone other than the attorney, the client or the agents of the client or the attorney.

The attorney-client privilege is limited to communications between taxpayers and attorneys. No equivalent privilege is provided for communications between taxpayers and other professionals authorized to practice before the Internal Revenue Service, such as accountants or enrolled agents.

House Bill

The House bill extends the present law attorney-client privilege of confidentiality to tax advice that is furnished by any individual who is authorized to practice before the Internal Revenue Service, acting in a manner consistent with State law for such individual's profession, to a client-taxpayer (or potential client-taxpayer) in any noncriminal proceeding before the Internal Revenue Service.

The House bill does not modify the attorney-client privilege. Accordingly, except for criminal proceedings, the privilege of confidentiality under this provision applies in the same manner and with the same limitations as the attorney-client privilege of present law.

Effective date.—The provision is effective with regard to communications made on or after the date of enactment.

Senate Amendment

The Senate amendment extends the present law attorney-client privilege of confidentiality to tax advice that is furnished to a client-taxpayer (or potential client-taxpayer) by any individual who is authorized under Federal law to practice before the IRS

if such practice is subject to regulation under section 330 of Title 31, United States Code. Individuals subject to regulation under section 330 of Title 31, United States Code include attorneys, certified public accountants, enrolled agents and enrolled actuaries. Tax advice means advice that is within the scope of authority for such individual's practice with respect to matters under Title 26 (the Internal Revenue Code). The privilege of confidentiality may be asserted in any noncriminal tax proceeding before the IRS, as well as in noncriminal tax proceedings in the Federal Courts where the IRS is a party to the proceeding.

The provision allows taxpayers to consult with other qualified tax advisors in the same manner they currently may consult with tax advisors that are licensed to practice law. The provision does not modify the attorney-client privilege of confidentiality, other than to extend it to other authorized practitioners. The privilege established by the provision applies only to the extent that communications would be privileged if they were between a taxpayer and an attorney. Accordingly, the privilege does not apply to any communication between a certified public accountant, enrolled agent, or enrolled actuary and such individual's client (or prospective client) if the communication would not have been privileged between an attorney and the attorney's client or prospective client. For example, information disclosed to an attorney for the purpose of preparing a tax return is not privileged under present law. Such information would not be privileged under the provision whether it was disclosed to an attorney, certified public accountant, enrolled agent or enrolled actuary.

The privilege granted by the provision may only be asserted in noncriminal tax proceedings before the IRS and in the Federal Courts with regard to such noncriminal tax matters in proceedings where the IRS is a party. The privilege may not be asserted to prevent the disclosure of information to any regulatory body other than the IRS. The ability of any other regulatory body, including the Securities and Exchange Commission (SEC), to gain or compel information is unchanged by the provision. No privilege may be asserted under this provision by a taxpayer in dealings with such other regulatory bodies in an administrative or court proceeding.

Conference Agreement

The conference agreement follows the Senate amendment with a modification. The privilege of confidentiality created by this provision will not apply to any written communication between a federally authorized tax practitioner and any director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).

A tax shelter for this purpose is any partnership, entity, plan, or arrangement a significant purpose of which is the avoidance or evasion of income tax. Tax shelters for which no privilege of confidentiality will apply include, but are not limited to, those required to be registered as confidential corporate tax shelter arrangements under section 6111(d). The Conferees do not understand the promotion of tax shelters to be part of the routine relationship between a tax practitioner and a client. Accordingly, the Conferees do not anticipate that the tax shelter limitation will adversely affect such routine relationships.

The privilege created by this provision may be waived in the same manner as the attorney-client privilege. For example, if a

taxpayer or federally authorized tax practitioner discloses to a third party the substance of a communication protected by the privilege, the privilege for that communication and any related communications is considered to be waived to the same extent and in the same manner as the privilege would be waived if the disclosure related to an attorney-client communication.

The conference agreement also clarifies that the privilege created by this provision may be asserted in noncriminal tax proceedings before the IRS and in the Federal courts with regard to a noncriminal tax proceeding where the United States is a party.

This provision relates only to matters of privileged communications. No inference is intended as to whether aspects of federal tax practice covered by the new privilege constitute the authorized or unauthorized practice of law under various State laws.

Effective date.—The provision is effective with regard to communications made on or after the date of enactment.

b. Limitation on financial status audit techniques (sec. 343 of the House bill and sec. 3412 of the Senate amendment)

Present Law

The Secretary is authorized and required to make the inquiries and determinations necessary to insure the assessment of Federal income taxes. For this purpose, any reasonable method may be used to determine the amount of Federal income tax owed. The courts have upheld the use of financial status and economic reality examination techniques to determine the existence of unreported income in appropriate circumstances.

House Bill

The provision prohibits the IRS from using financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the IRS has a reasonable indication that there is a likelihood of unreported income.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Software trade secrets protection (sec. 344 of the House bill and sec. 3413 of the Senate amendment)

Present Law

The Secretary of the Treasury is authorized to examine any books, papers, records, or other data that may be relevant or material to an inquiry into the correctness of any Federal tax return. The Secretary may issue and serve summonses necessary to obtain such data, including summonses on certain third-party recordkeepers.

The Secretary is considered to have made a prima facie case for the enforcement of a summons if the so-called "Powell standards" are met.¹⁷ The Powell standards require: (1) that the examination to which the summons relates is being conducted pursuant to a legitimate purpose; (2) that the summons seek information that may be relevant to such examination; (3) that the IRS not already be in possession of the information; and (4) that the administrative steps required by the Code have been followed. However, a summons will not be enforced if the burden it places on the summonsed party is out of proportion to the end sought.¹⁸ Where the summons is issued against a third-party, particularly one that is a stranger to the taxpayer's affairs, the IRS has been required to show

¹⁷ See *Powell v. U.S.*, 379 U.S. 48 (1964).

¹⁸ *Harrington v. U.S.*, 388 F. 2d 520 (2nd Cir. 1968).

that the circumstances of the investigation indicate a realistic expectation, and not merely an idle hope, that something relevant to the investigation may be discovered in order to have the summons enforced.¹⁹

There are no specific statutory restrictions on the ability of the Secretary to demand the production of computer records, programs, source code or similar materials; whether held by the taxpayer or by a third-party.

House Bill

The House bill prohibits the Secretary from issuing (or beginning an action to enforce) a summons in a civil action for any portion of any third-party tax-related computer source code unless (1) the Secretary is unable to otherwise reasonably ascertain the correctness of an item on a return from the taxpayer's other books, papers, records, other data, or the computer software program and associated data itself and (2) the Secretary first identifies with reasonable specificity the portion of the computer source code to be used to verify the correctness of the item.

The Secretary is considered to have satisfied these requirements with regard to the identified portion of the source code if the Secretary makes a formal request for such materials to both the taxpayer and the owner or developer of the software that is not satisfied within 90 days.

The Secretary's determination that the identified portion of the third-party tax-related computer source code may be summoned may be contested in any proceeding to enforce the summons, by any person to whom the summons is addressed. For this purpose, the special procedures for third-party summonses will apply. In any such proceeding, the court may issue any order that is necessary to prevent the disclosure of trade secrets or other confidential information.

The prohibition on issuing summons for tax-related computer source code does not apply in connection with any inquiry into any offense connected with the administration or enforcement of the internal revenue laws. A computer software program will not be treated as tax advice for the purpose of the professional-client privilege contained in section 341 of the House bill.

Effective date.—Summons issued more than 90 days after the date of enactment.

Senate Amendment

The Senate amendment expands the limitations in the House bill in the following manner:

(1) The prohibitions apply to all computer source code unless developed for the internal use of the taxpayer or a related person.

(2) In order to summons source code, the Secretary is required to determine that the need for the source code outweighs the risks of disclosure of the computer source code in addition to being unable to otherwise reasonably ascertain the correctness of an item on a taxpayer's return and identifying the portion of the Code with reasonable specificity.

(3) If the Secretary makes such a determination he will be considered to have satisfied the statutory requirements to summons source code if he (a) makes a good faith determination that it is not feasible to determine the correctness of the return item in question without access to the computer software program and associated data, (b) makes a formal request for such program and any data from the taxpayer and requests such program from the owner of the source code after reaching such determination, and (c) has not received such program and data

within 180 days of making the formal request.

In addition to authorizing any court enforcing a subpoena to issue any order necessary to prevent the disclosure of confidential information, the Senate amendments establishes a number of specific protections against the disclosure and improper use of trade secrets and confidential information incident to the examination by the Secretary of any computer software program or source code that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer. These protections include the following:

(1) Such software or source code may be examined only in connection with the examination of the taxpayer's return with regard to which it was received.

(2) Such software or source code must be maintained in a secure area.

(3) Such source code may not be removed from the owner's place of business without the owner's consent unless such removal is pursuant to a court order.

(4) Such software or source code may not be decompiled or disassembled.

(5) Such software or source code may only be copied as necessary to perform the specific examination. The owner of the software must be informed of any copies that are made, such copies must be numbered, and at the conclusion of the examination and any related court proceedings, all such copies must be accounted for and returned to the owner, permanently deleted, or destroyed. The Secretary must provide the owner of such software or source code with the names of any individuals who will have access to such software or source code.

(6) If an individual who is not an officer or employee of the U.S. Government will examine the software or source code, such individual must enter into a written agreement with the Secretary that such individual will not disclose such software or source code to any person other than authorized employees or agents of the Secretary at any time, and that such individual will not participate in the development of software that is intended for a similar purpose as the summoned software for a period of two years.

(7) Criminal penalties are provided where any person willfully divulges or makes known software that was obtained (whether or not by summons) for the purpose of examining a taxpayer's return in violation of this provision.

Effective date.—Summons issued and software acquired after the date of enactment. In addition, 90 days after the date of enactment, the protections against the disclosure and improper use of trade secrets and confidential information added by the provision (except for the requirement that the Secretary provide a written agreement from non-U.S. government officers and employees) apply to software and source code acquired on or before the date of enactment.

Conference Agreement

The conference agreement generally follows the Senate amendment with regard to the safeguards for protection of computer software and source code that is obtained by the IRS in the course of the examination of a taxpayer's return. The conference agreement specifically provides that computer software or source code that is obtained by the IRS in the course of the examination of a taxpayer's return will be treated as return information for the purposes of section 6103. The conference agreement follows the Senate amendment with regard to the standards the Secretary must meet in order to summons certain types of computer source code. The conference agreement follows the House

bill in limiting the higher standards for a summons to third-party tax-related computer source code.

Under the conference agreement, no summons may be issued for tax-related computer software source code unless (1) the Secretary is unable otherwise to ascertain the correctness of any item on a return from the taxpayer's books and records or the computer software program and associated data, (2) the Secretary identifies with reasonable specificity the portion of the computer source code needed to verify the correctness of the item and (3) the Secretary determines that the need for the source code outweighs the risk of unauthorized disclosure of trade secrets. The Secretary is considered to have satisfied the first two of these requirements if the Secretary makes a formal request for such materials to both the taxpayer and the owner of the software that is not satisfied within 180 days.

This limitation on the summons of tax-related computer software source code does not apply if the summons is issued in connection with an inquiry into any offense connected with the administration or enforcement of the internal revenue laws. The limitation also does not apply to a summons of computer software source code that was acquired or developed by the taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution. A finding that computer software source code was developed for internal use, and thus not eligible for the limitation in summons authority in this provision, is not intended to be dispositive of whether such software was intended for internal use for any other purpose of this title.

Communications between the owner of the tax-related computer software source code and the taxpayer are not protected from summons by this provision. Communications between the owner of the tax-related source code and persons not related to the taxpayer that are related to the functioning and operation of the software may be treated as a part of the computer software source code.

The provision does not change or eliminate any other requirement of the Code. A summons for third-party tax-related computer source code that meets the standards established by the provision will not be enforced if it would not be enforced under present law. For example, if the Secretary's purpose in issuing the summons is shown to be improper, the summons would not be enforced, even if the Secretary otherwise met the standards for the summons of computer source code established by the provision. The limitations on the summons of tax-related computer software source code apply only with respect to computer software that is used for accounting tax return preparation, tax compliance or tax planning purposes. No inference is intended with respect to computer software used for all other purposes. In such cases, current law will continue to apply, subject to the protections against the disclosure and improper use of trade secrets and other confidential information added by this provision.

Software or source code that is required to be provided under present law must be provided without regard to this provision. For example, computer software or source code that is required to be provided in connection with the registration of a confidential corporate tax shelter arrangements under section 6111 would continue to be required to be provided without regard to this provision. Thus, the registration requirement of section 6111 cannot be avoided where the tax benefits of the shelter are discernible only from the operation of a computer program.

¹⁹ *Harrington, supra.*

The conference agreement includes the protections against the disclosure and improper use of trade secrets and confidential information contained in the Senate amendment. The requirement that software or source code obtained by the Secretary in the course of an examination be used only in connection with that examination is intended to prevent the Secretary from using the software for the purpose of examining other, unrelated taxpayers. The requirement is not intended to prevent the Secretary from using knowledge it obtains in the course of the examination, so long as such use does not result in the disclosure of tax return information (including the software or source code) or the violation of any statutory protection or judicial order.

Effective date.—The conference agreement follows the Senate effective date.

d. Threat of audit prohibited to coerce tip reporting alternative commitment agreements (sec. 349 of the House bill and sec. 3414 of the Senate amendment)

Present Law

Restaurants may enter into Tip Reporting Alternative Commitment (TRAC) agreements. A restaurant entering into a TRAC agreement is obligated to educate its employees on their tip reporting obligations, to institute formal tip reporting procedures, to fulfill all filing and record keeping requirements, and to pay and deposit taxes. In return, the IRS agrees to base the restaurant's liability for employment taxes solely on reported tips and any unreported tips discovered during an IRS audit of an employee.

House Bill

The provision requires the IRS to instruct its employees that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer to enter into a TRAC agreement.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Taxpayers allowed motion to quash all third-party summonses (sec. 3415 of the Senate amendment)

Present Law

When the IRS issues a summons to a "third-party recordkeeper" relating to the business transactions or affairs of a taxpayer, notice of the summons must be given to the taxpayer within three days by certified or registered mail. The taxpayer is thereafter given up to 23 days to begin a court proceeding to quash the summons. If the taxpayer does so, third-party recordkeepers are prohibited from complying with the summons until the court rules on the taxpayer's petition or motion to quash, but the statute of limitations for assessment and collection with respect to the taxpayer is stayed during the pendency of such a proceeding. Third-party recordkeepers are generally persons who hold financial information about the taxpayer, such as banks, brokers, attorneys, and accountants.

House Bill

No provision.

Senate Amendment

The Senate amendment generally expands the current "third-party recordkeeper" procedures to apply to summonses issued to persons other than the taxpayer. Thus, the taxpayer whose liability is being investigated receives notice of the summons and is entitled to bring an action in the appropriate U.S. District Court to quash the summons. As under the current third-party record-

keeper provision, the statute of limitations on assessment and collection is stayed during the litigation, and certain kinds of summonses specified under present law are not subject to these requirements.

Effective date.—Summonses served after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment with a clarification that nothing in section 7609 of the Code (relating to special procedures for third-party summonses) shall be construed to limit the ability of the IRS to obtain information (other than by summons) through formal or informal procedures authorized by the Code.

f. Service of summonses to third-party recordkeepers permitted by mail (sec. 3416 of the Senate amendment)

Present Law

A summons must be served "by an attested copy delivered in hand to the person to whom it is directed or left at his last and usual place of abode." If a third-party recordkeeper summons is served, the IRS may give the taxpayer notice of the summons via certified or registered mail. The Federal Rules of Civil Procedure permits service of process by mail even in summons enforcement proceedings.

House Bill

No provision.

Senate Amendment

The Senate amendment allows the IRS the option of serving any summons either in person or by certified or registered mail.

Effective date.—Summonses served after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Notice of IRS contact of third parties (sec. 3417 of the Senate amendment)

Present Law

Third parties may be contacted by the IRS in connection with the examination of a taxpayer or the collection of the tax liability of the taxpayer. The IRS has the right to summon third-party recordkeepers. In general, the taxpayer must be notified of the service of summonses on a third party within three days of the date of service. The IRS also has the right to seize property of the taxpayer that is held in the hands of third parties. Except in jeopardy situations, the Internal Revenue Manual provides that IRS will personally contact the taxpayer and inform the taxpayer that seizure of the asset is planned.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to notify the taxpayer before contacting third parties regarding examination or collection activities (including summonses) with respect to the taxpayer. Contacts with government officials relating to matters such as the location of assets or the taxpayer's current address are not restricted by this provision. The provision does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, or if the taxpayer authorized the contact.

Effective date.—Contacts made after 180 days after the date of enactment.

Conference Agreement

The conference agreement provides that the IRS may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that the IRS may contact persons other than the tax-

payer. It is intended that in general this notice will be provided as part of an existing IRS notice provided to taxpayers. The conference agreement also requires the IRS to provide periodically to the taxpayer a record of persons previously contacted during that period by the IRS with respect to the determination or collection of that taxpayer's tax liability. This record shall also be provided upon request of the taxpayer. The provision does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, if the Secretary determines for good cause shown that disclosure may involve reprisal against any person, or if the taxpayer authorized the contact.

Effective date.—Contacts made after 180 days after the date of enactment.

3. Collection activities

a. Approval process for liens, levies, and seizures (sec. 3421 of the Senate amendment)

Present Law

Supervisory approval of liens, levies or seizures is only required under certain circumstances. For example, a levy on a taxpayer's principal residence is only permitted upon the written approval of the District Director or Assistant District Director.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to implement an approval process under which any lien, levy or seizure would, where appropriate, be approved by a supervisor, who would review the taxpayer's information, verify that a balance is due, and affirm that a lien, levy or seizure is appropriate under the circumstances. Circumstances to be considered include the amount due and the value of the asset.

Effective date.—Collection actions commenced after date of enactment, except for automated collection system actions initiated before January 1, 2000.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees intend that the Commissioner have discretion in promulgating the procedures required by this provision to determine the circumstances under which supervisory review of liens or levies issued by the automated collection system is or is not appropriate.

Effective date.—Collection actions commenced after date of enactment, except in the case of any action under the automated collection system, the provision applies to actions initiated after December 31, 2000.

b. Modifications to certain levy exemption amounts (sec. 3431 of the Senate amendment)

Present Law

IRS may levy on all non-exempt property of the taxpayer. Property exempt from levy includes up to \$2,500 in value of fuel, provisions, furniture, and personal effects in the taxpayer's household and up to \$1,250 in value of books and tools necessary for the trade, business or profession of the taxpayer.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the value of personal effects exempt from levy to \$10,000 and the value of books and tools exempt from levy to \$5,000. These amounts are indexed for inflation.

Effective date.—Levies issued after date of enactment.

Conference Agreement

The conference agreement increases the value of personal effects exempt from levy to

\$6,250 and the value of books and tools exempt from levy to \$3,125. These amounts are indexed for inflation.

Effective date.—Levies issued after date of enactment.

c. Release of levy upon agreement that amount is uncollectible (sec. 3432 of the Senate amendment)

Present Law

Some taxpayers have contended that the IRS does not release a wage levy immediately upon receipt of proof that the tax is not collectible. Instead, they claim, the IRS levies on one period's wage payment before releasing the levy.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to immediately release a wage levy upon agreement with the taxpayer that the tax is not collectible.

Effective date.—Levies imposed after December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, with a clarification that the release is to occur as soon as practicable. The IRS is not to intentionally delay until after one wage payment has been made and levied upon before releasing the levy.

d. Levy prohibited during pendency of refund proceedings (sec. 3433 of the Senate amendment)

Present Law

The IRS is prohibited from making a tax assessment (and thus prohibited from collecting payment) with respect to a tax liability while it is being contested in Tax Court. However, the IRS is permitted to assess and collect tax liabilities during the pendency of a refund suit relating to such tax liabilities, under the circumstances described below.

Generally, full payment of the tax at issue is a prerequisite to a refund suit. However, if the tax is divisible (such as employment taxes or the trust fund penalty under Code section 6672), the taxpayer need only pay the tax for the applicable period before filing a refund claim.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to withhold collection of liabilities that are the subject of a refund suit during the pendency of the litigation. This will only apply when refund suits can be brought without the full payment of the tax, i.e., in the case of divisible taxes. Collection by levy would be withheld unless jeopardy exists or the taxpayer waives the suspension of collection in writing (because collection will stop the running of interest and penalties on the tax liability). The Secretary could not commence a civil action to collect a liability except in a proceeding related to the initial refund proceeding. The statute of limitations on collection is stayed for the period during which the IRS is prohibited from collecting by levy or otherwise.

Effective date.—Unpaid tax attributable to taxable periods beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, with a technical modification. The conferees wish to clarify that proceedings related to a proceeding²⁰ under this

provision include, but are not limited to, civil actions or third-party complaints initiated by the United States or another person with respect to the same kinds of tax (or related taxes or penalties) for the same (or overlapping) tax periods. For example, if a taxpayer brings a suit for a refund of a portion of a penalty that the taxpayer has paid under section 6672, the United States could, consistent with this provision, counterclaim against the taxpayer for the balance of the penalty or initiate related claims against other persons assessed penalties under section 6672 for the same employment taxes.

e. Approval required for jeopardy and termination assessments and jeopardy levies (sec. 3434 of the Senate amendment)

Present Law

In general, a 30-day waiting period is imposed after assessment of all types of taxes. In certain circumstances, the waiting period puts the collection of taxes at risk. The Code provides special procedures that allow the IRS to make jeopardy assessments or termination assessments in certain extraordinary circumstances, such as if the taxpayer is leaving or removing property from the United States, or if assessment or collection would be jeopardized by delay. In jeopardy or termination situations, a levy may be made without the 30-days' notice of intent to levy that is ordinarily required.

House Bill

No provision.

Senate Amendment

The Senate amendment requires IRS Counsel review and approval before the IRS can make a jeopardy assessment, a termination assessment, or a jeopardy levy. If Counsel's approval is not obtained, the taxpayer is entitled to obtain abatement of the assessment or release of the levy, and, if the IRS fails to offer such relief, to appeal first to IRS Appeals under the new due process procedure for IRS collections and then to court.

Effective date.—Taxes assessed and levies made after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Increase in amount of certain property on which lien not valid (sec. 3435 of the Senate amendment)

Present Law

A Federal tax lien attaches to all property and rights in property of the taxpayer, if the taxpayer fails to pay the assessed tax liability after notice and demand. However, the Federal tax lien is not valid as to certain "superpriority" interests.

Two of these interests are limited by a specific dollar amount. Purchasers of personal property at a casual sale are presently protected against a Federal tax lien attached to such property to the extent the sale is for less than \$250. In addition, present law provides protection to mechanic's lienors with respect to the repairs or improvements made to owner-occupied personal residences, but only to the extent that the contract for repair or improvement is for not more than \$1,000.

In addition, a superpriority is granted to banks and building and loan associations which make passbook loans to their customers, provided that those institutions retain the passbooks in their possession until the loan is completely paid off.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the dollar limit for purchasers at a casual sale from \$250 to \$1,000, and further increases the dollar

limit from \$1,000 to \$5,000 for mechanics lienors providing home improvement work for owner-occupied personal residences. The Senate amendment indexes these amounts for inflation. The Senate amendment also clarifies the superpriority rules to reflect present banking practices, where a passbook-type loan may be made even though an actual passbook is not used.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Waiver of early withdrawal tax for IRS levies on employer-sponsored retirement plans or IRAs (sec. 3436 of the Senate amendment)

Present Law

Under present law, a distribution of benefits from a employer-sponsored retirement plan or an Individual Retirement Arrangement ("IRA") generally is includible in gross income in the year it is paid or distributed, except to the extent the amount distributed represents the employee's after-tax contributions or investment in the contract (i.e., basis). Special rules apply to lump-sum distributions from qualified retirement plans, distributions rolled over to an IRA or employer-sponsored retirement plan, and distributions of employer securities.

Early distributions from qualified plans and IRAs includible in income generally are subject to a 10-percent early withdrawal tax, unless an exception to the tax applies. Includible amounts withdrawn prior to attainment of age 59½ are subject to the additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of adjusted gross income ("AGI"), or is used to purchase health insurance of an unemployed individual. Certain additional exceptions to the tax apply separately to withdrawals from IRAs and qualified plans. Distributions from IRAs for education expenses and for up to \$10,000 of first-time homebuyer expenses, or to unemployed individuals to purchase health insurance are not subject to the 10-percent early withdrawal tax. A distribution from a qualified plan made by an employee after separation from service after attainment of age 55 is not subject to the 10-percent early withdrawal tax.

Under present law, the IRS is authorized to levy on all non-exempt property of the taxpayer. Benefits under employer-sponsored retirement plans (including 403(b) and 457 plans) and IRAs are not exempt from levy by the IRS.

Distributions from employer-sponsored retirement plans or IRAs made on account of an IRS levy would be includible in the gross income of the individual, except to the extent the amount distributed represents after-tax contributions. In addition, the amount includible in income would be subject to the 10-percent early withdrawal tax, unless an exception described above applies.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an exception from the 10-percent early withdrawal tax for amounts withdrawn from an employer-sponsored retirement plan or an IRA that are subject to a levy by the IRS. The exception applies only if the plan or IRA is levied; it does not apply, for example, if the taxpayer withdraws funds to pay taxes in the absence of a levy, in order to release a levy on other interests.

Effective date.—The provision is effective for withdrawals after the date of enactment.

²⁰For purposes of new section 6331(i)(4)(A)(ii) of the Code.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification to the effective date. The provision is effective for distributions after December 31, 1999.

h. Prohibition of sales of seized property at less than minimum bid (sec. 3441 of the Senate amendment)**Present Law**

A minimum bid price must be established for seized property offered for sale. To conserve the taxpayer's equity, the minimum bid price should normally be computed at 80 percent or more of the forced sale value of the property less encumbrances having priority over the Federal tax lien. If the group manager concurs, the minimum sales price may be set at less than 80 percent. The taxpayer is to receive notice of the minimum bid price within 10 days of the sale. The taxpayer has the opportunity to challenge the minimum bid price, which cannot be more than the tax liability plus the expenses of sale. Present law does not contemplate a sale of the seized property at less than the minimum bid price. Rather, if no person offers the minimum bid price, the IRS may buy the property at the minimum bid price or the property may be released to the owner.

House Bill

No provision.

Senate Amendment

The Senate amendment prohibits the IRS from selling seized property for less than the minimum bid price. The Senate amendment provides that the sale of property for less than the minimum bid price would constitute an unauthorized collection action, which would permit an affected person to sue for civil damages.

Effective date.—Sales occurring after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

i. Accounting of sales of seized property (sec. 3442 of the Senate amendment)**Present Law**

The IRS is authorized to seize and sell a taxpayer's property to satisfy an unpaid tax liability. The IRS is required to give written notice to the taxpayer before seizure of the property. The IRS must also give written notice to the taxpayer at least 10 days before the sale of the seized property.

The IRS is required to keep records of all sales of real property. The records must set forth all proceeds and expenses of the sale. The IRS is required to apply the proceeds first against the expenses of the sale, then against a specific tax liability on the seized property, if any, and finally against any unpaid tax liability of the taxpayer. Any surplus proceeds are credited to the taxpayer or persons legally entitled to the proceeds.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to provide a written accounting of all sales of seized property, whether real or personal, to the taxpayer. The accounting must include a receipt for the amount credited to the taxpayer's account.

Effective date.—Seizures occurring after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

j. Uniform asset disposal mechanism (sec. 3443 of the Senate amendment)**Present Law**

The IRS must sell property seized by levy either by public auction or by public sale

under sealed bids. These are often conducted by the revenue officer charged with collecting the tax liability.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to implement a uniform asset disposal mechanism for sales of seized property. The disposal mechanism should be designed to remove any participation in the sale of seized assets by revenue officers. The provision authorizes the consideration of outsourcing of the disposal mechanism.

Effective date.—Requires a uniform asset disposal system to be implemented within two years from the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

k. Codification of IRS administrative procedures for seizure of taxpayer's property (sec. 3444 of the Senate amendment)**Present Law**

The Internal Revenue Manual (IRM) provides general guidelines for seizure actions.

Prior to the levy action, the revenue officer must determine that there is sufficient equity in the property to be seized to yield net proceeds from the sale to apply to unpaid tax liabilities. If it is determined after seizure that the taxpayer's equity is insufficient to yield net proceeds from sale to apply to the unpaid tax, the revenue officer will immediately release the seized property.

House Bill

No provision.

Senate Amendment

The Senate amendment codifies the IRS administrative procedures which require the IRS to investigate the status of property prior to levy.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with a technical modification applying the investigation requirement only to property to be sold pursuant to section 6335.

l. Procedures for seizure of residences and businesses (sec. 3445 of the Senate amendment)**Present Law**

Subject to certain procedural rules and limitations, the Secretary may seize the property of the taxpayer who neglects or refuses to pay any tax within 10 days after notice and demand. The IRS may not levy on the personal residence of the taxpayer unless the District Director (or the assistant District Director) personally approves in writing or in cases of jeopardy. There are no special rules for property that is used as a residence by parties other than the taxpayer. IRS Policy Statement P-5-34 states that the facts of a case and alternative collection methods must be thoroughly considered before deciding to seize the assets of a going business.

House Bill

No provision.

Senate Amendment

The Senate amendment prohibits the IRS from seizing real property that is used as a residence (by the taxpayer or another person) to satisfy an unpaid liability of \$5,000 or less, including penalties and interest.

The Senate amendment requires the IRS to exhaust all other payment options before seizing the taxpayer's business assets or principal residence. For this purpose, future income that may be derived by a taxpayer

from the commercial sale of fish or wildlife under a specified State permit must be considered in evaluating other payment options before seizing the taxpayer's business assets. The provision does not apply in cases of jeopardy.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The prohibition on seizing a residence to satisfy an unpaid liability of \$5,000 or less is clarified to apply to any real property used as a residence by the taxpayer or any nonrental real property of the taxpayer used by any other individual as a residence. The definition of business assets is clarified to apply to tangible personal property or real property used in the trade or business of an individual taxpayer (other than real property that is rented). The conference agreement provides that a levy is permitted on a principal residence only if a judge or magistrate of a United States district court approves (in writing) of the levy.

4. Provisions relating to examination and collection activities**a. Procedures relating to extensions of statute of limitations by agreement (sec. 345 of the House bill and sec. 3461 of the Senate amendment)****Present Law**

The statute of limitations within which the IRS may assess additional taxes is generally three years from the date a return is filed. Prior to the expiration of the statute of limitations, both the taxpayer and the IRS may agree in writing to extend the statute. An extension may be for either a specified period or an indefinite period. The statute of limitations within which a tax may be collected after assessment is 10 years after assessment. Prior to the expiration of the statute of limitations on collection, both the taxpayer and the IRS may agree in writing to extend the statute.

House Bill

The House bill requires that, on each occasion on which the taxpayer is requested by the IRS to extend the statute of limitations, the IRS must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations or to limit the extension to particular issues.

Effective date.—Requests to extend the statute of limitations made after the date of enactment.

Senate Amendment

The Senate amendment eliminates the provision of present law that allows the statute of limitations on collections to be extended by agreement between the taxpayer and the IRS.

The Senate amendment also requires that, on each occasion on which the taxpayer is requested by the IRS to extend the statute of limitations on assessment, the IRS must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations or to limit the extension to particular issues.

Effective date.—Requests to extend the statute of limitations made after December 31, 1999 and to all extensions of the statute of limitations on collection that are open on December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, except that extensions of the statute of limitations on collection may be made in connection with an installment agreement; the extension is only for the period for which the waiver of the statute of limitations entered in connection with the original written terms of the installment agreement extends beyond the end of the

otherwise applicable 10-year period, plus 90 days.

Effective date. Requests to extend the statute of limitations made after December 31, 1999. If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend that period beyond the 10-year statute of limitations on collection, that extension shall expire on the latest of: the last day of such 10-year period, December 31, 2002, or, in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.

b. Offers-in-compromise (sec. 346 of the House bill and sec. 3462 of the Senate amendment)

Present Law

The Code permits the IRS to compromise a taxpayer's tax liability. An offer-in-compromise is an offer by the taxpayer to settle unpaid tax accounts for less than the full amount of the assessed balance due. An offer-in-compromise may be submitted for all types of taxes, as well as interest and penalties, arising under the Internal Revenue Code.

There are two bases on which an offer can be made: doubt as to liability for the amount owed and doubt as to ability to pay the amount owed.

A compromise agreement based on doubt as to ability to pay requires the taxpayer to file returns and pay taxes for five years from the date the IRS accepts the offer. Failure to do so permits the IRS to begin immediate collection actions for the original amount of the liability. The Internal Revenue Manual provides guidelines for revenue officers to determine whether an offer-in-compromise is adequate. An offer is adequate if it reasonably reflects collection potential. Although the revenue officer is instructed to consider the taxpayer's assets and future and present income, the IRM advises that rejection of an offer solely based on narrow asset and income evaluations should be avoided.

Pursuant to the IRM, collection normally is withheld during the period an offer-in-compromise is pending, unless it is determined that the offer is a delaying tactic and collection is in jeopardy.

House Bill

Rights of taxpayers entering into offers-in-compromise.—The House bill requires the IRS to develop and publish schedules of national and local allowances that will provide taxpayers entering into an offer-in-compromise with adequate means to provide for basic living expenses.

Suspend collection by levy while offer-in-compromise is pending.—No provision.

Procedures for reviews of rejections of offers-in-compromise and installment agreements.—No provision.

Publication of taxpayer's rights with respect to offers-in-compromise.—The House bill requires the IRS to publish guidance on the rights and obligations of taxpayers and the IRS relating to offers in compromise, including a compliant spouse's right to apply to reinstate an agreement that would otherwise be revoked due to the nonfiling or nonpayment of the other spouse, providing all payments required under the compromise agreement are current.

Liberal acceptance policy.—No provision.

Effective date.—Date of enactment.

Senate Amendment

Rights of taxpayers entering into offers-in-compromise.—Same as the House bill, except as follows. Under the Senate amendment, the IRS also is required to consider the facts and circumstances of a particular taxpayer's case in determining whether the national and local schedules are adequate for that par-

ticular taxpayer. If the facts indicate that use of scheduled allowances would be inadequate under the circumstances, the taxpayer is not limited by the national or local allowances.

The Senate amendment prohibits the IRS from rejecting an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer. The Senate amendment provides that, in the case of an offer-in-compromise submitted solely on the basis of doubt as to liability, the IRS may not reject the offer merely because the IRS cannot locate the taxpayer's file. The Senate amendment prohibits the IRS from requesting a financial statement if the taxpayer makes an offer-in-compromise based solely on doubt as to liability.

Suspend collection by levy while offer-in-compromise is pending.—The Senate amendment prohibits the IRS from collecting a tax liability by levy (1) during any period that a taxpayer's offer-in-compromise for that liability is being processed, (2) during the 30 days following rejection of an offer, and (3) during any period in which an appeal of the rejection of an offer is being considered. Taxpayers whose offers are rejected and who made good faith revisions of their offers and resubmitted them within 30 days of the rejection or return would be eligible for a continuous period of relief from collection by levy. This prohibition on collection by levy would not apply if the IRS determines that collection is in jeopardy or that the offer was submitted solely to delay collection. The Senate amendment provides that the statute of limitations on collection would be tolled for the period during which collection by levy is barred.

Procedures for reviews of rejections of offers-in-compromise and installment agreements.—The Senate amendment requires that the IRS implement procedures to review all proposed IRS rejections of taxpayer offers-in-compromise and requests for installment agreements prior to the rejection being communicated to the taxpayer. The Senate amendment requires the IRS to allow the taxpayer to appeal any rejection of such offer or agreement to the IRS Office of Appeals. The IRS must notify taxpayers of their right to have an appeals officer review a rejected offer-in-compromise on the application form for an offer-in-compromise.

Publication of taxpayer's rights with respect to offers-in-compromise.—Same as the House bill.

Liberal acceptance policy.—The Senate amendment provides that the IRS will adopt a liberal acceptance policy for offers-in-compromise to provide an incentive for taxpayers to continue to file tax returns and continue to pay their taxes.

Effective date.—Generally effective for offers-in-compromise submitted after the date of enactment. The provision suspending levy is effective with respect to offers-in-compromise pending on or made after December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, with the following additions. First, the provision suspending collection by levy while an offer-in-compromise is pending is also expanded to apply while an installment agreement is pending.

Second, the provision authorizes the Secretary to prescribe guidelines for the IRS to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute. Accordingly, the conferees expect that the present regulations will be expanded so as to permit the IRS, in certain circumstances, to consider additional factors (i.e., factors other than doubt as to liability or collectibility) in determining whether to

compromise the income tax liabilities of individual taxpayers. For example, the conferees anticipate that the IRS will take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer's income tax liability would promote effective tax administration. The conferees anticipate that, among other situations, the IRS may utilize this new authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability. The conferees believe that the ability to compromise tax liability and to make payments of tax liability by installment enhances taxpayer compliance. In addition, the conferees believe that the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system. Accordingly, the conferees believe that the IRS should make it easier for taxpayers to enter into offer-in-compromise agreements, and should do more to educate the taxpaying public about the availability of such agreements.

c. Notice of deficiency to specify deadlines for filing Tax Court petition (sec. 347 of the House bill and sec. 3463 of the Senate amendment)

Present Law

Taxpayers must file a petition with the Tax Court within 90 days after the deficiency notice is mailed (150 days if the person is outside the United States) (sec. 6213). If the petition is not filed within that time period, the Tax Court does not have jurisdiction to consider the petition.

House Bill

The provision requires the IRS to include on each deficiency notice the date determined by the IRS as the last day on which the taxpayer may file a petition with the Tax Court. The provision provides that a petition filed with the Tax Court by this date is treated as timely filed.

Effective date.—Notices mailed after December 31, 1998.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Refund or credit of overpayments before final determination (sec. 348 of the House bill and sec. 3464 of the Senate amendment)

Present Law

Generally, the IRS may not take action to collect a deficiency during the period a taxpayer may petition the Tax Court, or if the taxpayer petitions the Tax Court, until the decision of the Tax Court becomes final. Actions to collect a deficiency attempted during this period may be enjoined, but there is no authority for ordering the refund of any amount collected by the IRS during the prohibited period.

If a taxpayer contests a deficiency in the Tax Court, no credit or refund of income tax for the contested taxable year generally may be made, except in accordance with a decision of the Tax Court that has become final. Where the Tax Court determines that an overpayment has been made and a refund is due the taxpayer, and a party appeals a portion of the decision of the Tax Court, no provision exists for the refund of any portion of any overpayment that is not contested in the appeal.

House Bill

The provision provides that a proper court (including the Tax Court) may order a refund of any amount that was collected within the

period during which the Secretary is prohibited from collecting the deficiency by levy or other proceeding.

The provision also allows the refund of that portion of any overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. IRS procedures relating to appeal of examinations and collections (sec. 3465 of the Senate amendment)

Present Law

IRS Appeals operates through regional Appeals offices which are independent of the local District Director and Regional Commissioner's offices. In general, IRS Appeals offices have jurisdiction over both pre-assessment and post-assessment cases. The taxpayer generally has an opportunity to seek Appeals jurisdiction after failing to reach agreement with the Examination function and before filing a petition in Tax Court, after filing a petition in Tax Court (but before litigation), after assessment of certain penalties, after a claim for refund has been rejected by the District Director's office, and after a proposed rejection of an offer-in-compromise in a collection case.

In certain cases under Coordinated Examination Program procedures, the taxpayer has an opportunity to seek early Appeals jurisdiction over some issues while an examination is still pending on other issues. The early referral procedures also apply to employment tax issues on a limited basis.

A mediation or alternative dispute resolution (ADR) process is also available in certain cases. ADR is used at the end of the administrative process as a final attempt to resolve a dispute before litigation. ADR is currently only available for cases with more than \$10 million in dispute. ADR processes are also available in bankruptcy cases and cases involving a competent authority determination.

In April 1996, the IRS implemented the Collections Appeals Program within the Appeals function, which allows taxpayers to appeal lien, levy, or seizure actions proposed by the IRS. In January 1997, appeals for installment agreements proposed for termination were added to the program.

House Bill

No provision.

Senate Amendment

The Senate amendment codifies existing IRS procedures with respect to early referrals to Appeals and the Collections Appeals Process. The Senate amendment also codifies the existing ADR procedures, as modified by eliminating the dollar threshold.

In addition, the IRS is required to establish a pilot program of binding arbitration for disputes of all sizes. Under the pilot program, binding arbitration must be agreed to by both the taxpayer and the IRS.

The Senate amendment requires the IRS to make Appeals officers available on a regular basis in each State, and consider videoconferencing of Appeals conferences for taxpayers seeking appeals in rural or remote areas.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Application of certain fair debt collection practices (sec. 3466 of the Senate amendment)

Present Law

The Fair Debt Collection Practices Act provides a number of rules relating to debt collection practices. Among these are restrictions on communication with the consumer, such as a general prohibition on telephone calls outside the hours of 8:00 a.m. to 9:00 p.m. local time, and prohibitions on harassing or abusing the consumer. In general, these provisions do not apply to the Federal Government.

House Bill

No provision.

Senate Amendment

The Senate amendment applies the restrictions relating to communication with the taxpayer/debtor and the prohibitions on harassing or abusing the debtor to the IRS. The restrictions relating to communication with the taxpayer/debtor are not intended to hinder the ability of the IRS to respond to taxpayer inquiries (such as answering telephone calls from taxpayers).

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Guaranteed availability of installment agreements (sec. 3467 of the Senate amendment)

Present Law

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments if the IRS determines that doing so will facilitate collection of the amounts owed. An installment agreement does not reduce the amount of taxes, interest, or penalties owed, but does provide for a longer period during which payments may be made during which other IRS enforcement actions (such as levies or seizures) are held in abeyance. The IRS in most instances readily approves these requests if the amounts involved are not large (in general, below \$10,000) and if the taxpayer has filed tax returns on time in the past. Some taxpayers are required to submit background information to the IRS substantiating their application.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the Secretary to enter an installment agreement, at the taxpayer's option, if: (1) the liability is \$10,000, or less (excluding penalties and interest); (2) within the previous 5 years, the taxpayer has not failed to file or to pay, nor entered an installment agreement under this provision; (3) if requested by the Secretary, the taxpayer submits financial statements, and the Secretary determines that the taxpayer is unable to pay the tax due in full; (4) the installment agreement provides for full payment of the liability within 3 years; and (5) the taxpayer agrees to continue to comply with the tax laws and the terms of the agreement for the period (up to 3 years) that the agreement is in place.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

h. Prohibition on requests to taxpayers to waive rights to bring actions (sec. 3468 of the Senate amendment)

Present Law

There is no restriction on the circumstances under which the Government

may request a taxpayer to waive the taxpayer's right to sue the United States or one of its employees for any action taken in connection with the tax laws.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Government may not request a taxpayer to waive the taxpayer's right to sue the United States or one of its employees for any action taken in connection with the tax laws, unless (1) the taxpayer knowingly and voluntarily waives that right, or (2) the request is made to the taxpayer's attorney or other representative.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees do not intend this provision to apply to the waiver of claims for attorneys' fees or costs or to the waiver of one or more claims brought in the same administrative or judicial proceeding with other claims that are being settled.

F. Disclosures to Taxpayers

1. Explanation of joint and several liability (sec. 351 of the House bill and sec. 3501 of the Senate amendment)

Present Law

In general, spouses who file a joint tax return are each fully responsible for the accuracy of the tax return and for the full liability. Spouses who wish to avoid such joint and several liability may file as married persons filing separately. Special rules apply in the case of innocent spouses.

House Bill

The House bill requires that the IRS establish procedures clearly to alert married taxpayers of their joint and several liability on all appropriate tax publications and instructions. The IRS will make an appropriate cross reference to these statements near the signature line on appropriate tax forms.

Effective date.—Requires that the procedures be established as soon as practicable, but no later than 180 days after the date of enactment.

Senate Amendment

Same as the House bill, except that the Senate amendment also requires notification of the availability of electing separate liability.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that notification must be given of an individual's right to relief under new section 6015 of the Code.

2. Explanation of taxpayers' rights in interviews with the IRS (sec. 352 of the House bill and sec. 3502 of the Senate amendment)

Present Law

Prior to or at initial in-person audit interviews, the IRS must explain to taxpayers the audit process and taxpayers' rights under that process and the collection process and taxpayers' rights under that process. If a taxpayer clearly states during an interview with the IRS that the taxpayer wishes to consult with the taxpayer's representative, the interview must be suspended to afford the taxpayer a reasonable opportunity to consult with the representative.

House Bill

The House bill requires that the IRS rewrite Publication 1 ("Your Rights as a Taxpayer") to inform taxpayers more clearly of their rights (1) to be represented by a representative and (2) if the taxpayer is so represented, that the interview may not proceed

without the presence of the representative unless the taxpayer consents.

Effective date.—The addition to Publication 1 must be made not later than 180 days after the date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Disclosure of criteria for examination selection (sec. 353 of the House bill and sec. 3503 of the Senate amendment)

Present Law

The IRS examines Federal tax returns to determine the correct liability of taxpayers. The IRS selects returns to be audited in a number of ways, such as through a computerized classification system (the discriminant function ("DIF") system).

House Bill

The provision requires that IRS add to Publication 1 ("Your Rights as a Taxpayer") a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. The statement must not include any information the disclosure of which would be detrimental to law enforcement. The statement must specify the general procedures used by the IRS, including whether taxpayers are selected for examination on the basis of information in the media or from informants.

Effective date.—The addition to Publication 1 must be made not later than 180 days after the date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Explanation of the appeals and collection process (sec. 354 of the House bill and sec. 3504 of the Senate amendment)

Present Law

There is no statutory requirement that specific notices be given to taxpayers with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

House Bill

The House bill requires that an explanation of the appeals process and the collection process be provided with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

Effective date.—Requires that the explanation be included as soon as practicable, but no later than 180 days after the date of enactment.

Senate Amendment

The Senate amendment requires that, no later than 180 days after the date of enactment, a description of the entire process from examination through collections, including the assistance available to taxpayers from the Taxpayer Advocate at various points in the process, be provided with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Explanation of reason for refund disallowance (sec. 3505 of the Senate amendment)

Present Law

The Examination Division of the IRS examines claims for refund submitted by tax-

payers. The Internal Revenue Manual requires examination or other audit action on refund claims within 30 days after receipt of the claims. The refund claim is preliminarily examined to determine if it should be disallowed. The taxpayer will receive a form from the IRS stating that the claim for refund cannot be considered. Other cases will be examined as quickly as possible and the disposition of the case, including the reasons for the disallowance or partial disallowance of the refund claim, must be stated in the portion of the revenue agent's report that is sent to the taxpayer.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to notify the taxpayer of the specific reasons for the disallowance (or partial disallowance) of the refund claim.

Effective date.—180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications.

6. Statements to taxpayers with installment agreements (sec. 3506 of the Senate amendment)

Present Law

A taxpayer entering into an installment agreement to pay tax liabilities due to the IRS must complete a Form 433-D which sets forth the installment amounts to be paid monthly and the total amount of tax due. The IRS does not provide the taxpayer with an annual statement reflecting the amounts paid and the amount due remaining.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to send every taxpayer in an installment agreement an annual statement of the initial balance owed, the payments made during the year, and the remaining balance.

Effective date.—No later than 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—July 1, 2000.

7. Notification of change in tax matters partner (sec. 3507 of the Senate amendment)

Present Law

In general, the tax treatment of items of partnership income, loss, deductions and credits are determined at the partnership level in a unified partnership proceeding rather than in separate proceedings with each partner. In providing notice to taxpayers with respect to partnership proceedings, the IRS relies on information furnished by a party designated as the tax matters partner (TMP) of the partnership. The TMP is required to keep each partner informed of all administrative and judicial proceedings with respect to the partnership. Under certain circumstances, the IRS may require the resignation of the incumbent TMP and designate another partner as the TMP of a partnership.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to notify all partners of any resignation of the tax matters partner that is required by the IRS, and to notify the partners of any successor tax matters partner.

Effective date.—Selections of tax matters partners made by the Secretary after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Conditions under which taxpayers' returns may be disclosed (sec. 3508 of the Senate amendment)

Present Law

There is no requirement that the general tax forms instruction booklets include a description of conditions under which tax return information may be disclosed outside the IRS (including to States).

House Bill

Senate Amendment

The Senate amendment requires that general tax forms instruction booklets include a description of conditions under which tax return information may be disclosed outside the IRS (including to States).

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment with technical modifications; the conferees consider the statement currently contained in the general tax forms instruction booklets to be sufficient to fulfill the requirements of this provision.

9. Disclosure of Chief Counsel advice

Present Law

Section 6110 of the Code provides for the public inspection of written determinations, i.e., rulings, determination letters, and technical advice memoranda. The IRS issues annual revenue procedures setting forth the procedures for requests for these various forms of written determinations and participation in the formulation of such determinations.²¹ Under section 6110 and the regulations promulgated thereunder, the taxpayer who is the subject of a written determination can participate in the redaction of the documents to ensure that the taxpayer's privacy is protected and that sensitive private information is removed before the determination is publicly disclosed. In the event there is disagreement as to the information to be deleted, the section provides for litigation in the courts to resolve such disagreements.

One of the Office of Chief Counsel's major roles is to advise Internal Revenue Service personnel on legal matters at all stages of case development. The Office of Chief Counsel thus issues various forms of written legal advice to field agents of the IRS and to its own field attorneys that do not fall within the current definition of "written determination" under section 6110. Traditionally, field Counsel offices provided most of the assistance to the IRS, usually at IRS field offices, but since 1988, the National Office of Chief Counsel has been rendering more assistance to field Counsel and IRS offices. National Office of Chief Counsel assistance in taxpayer-specific cases is generally called "field service advice." The taxpayers who are the subject of field service advice generally do not participate in the process, leading some tax commentators to express concern that the field service advice process was displacing the technical advice process.

There has been controversy as to whether the Office of Chief Counsel must release forms of advice other than written determinations pursuant to the Freedom of Information Act (FOIA). In *Tax Analysts v. IRS*,²² the D.C. Circuit held that the legal analysis portions of field service advice created in the context of specific taxpayers' cases are not "return information," as defined by section 6103(b)(2), and must be released under FOIA. The court also found that portions of field

²¹ See e.g., Rev. Procs. 98-1 and 98-2.

²² 117 F.3d 607 (D.C. Cir. 1997).

service advice issued in docketed cases may be withheld as privileged attorney work product. However, some issues remain outstanding. Although the extent to which such materials must be released is still in dispute, it is clear that they are not expressly covered by section 6110. As a consequence, there exists no mechanism by which taxpayers may participate in the administrative process of redacting their private information from such documents or to resolve disagreements in court.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

In general

The conferees believe that written documents issued by the National Office of Chief Counsel to its field components and field agents of the IRS should be subject to public release in a manner similar to technical advice memoranda or other written determinations. In this way, all taxpayers can be assured of access to the "considered view of the Chief Counsel's national office on significant tax issues."²³ Creating a structured mechanism by which these types of legal memoranda are open to public inspection will increase the public's confidence that the tax system operates fairly and in an even-handed manner with respect to all taxpayers.

As part of making these documents public, however, the privacy of the taxpayer who is the subject of the advice must be protected. Any procedure for making such advice public must therefore include adequate safeguards for taxpayers whose privacy interests are implicated. There should be a mechanism for taxpayer participation in the deletion of any private information. There should also be a process whereby appropriate governmental privileges may be asserted by the IRS and contested by the public or the taxpayer.

The provision amends section 6110 of the Code, establishing a structured process by which the IRS will make certain work products, designated as "Chief Counsel Advice," open to public inspection on an ongoing basis. It is designed to protect taxpayer privacy while allowing the public inspection of these documents in a manner generally consistent with the mechanism of section 6110 for the public inspection of written determinations. In general, the provision operates by establishing that Chief Counsel Advice are written determinations subject to the public inspection provisions of section 6110.

Definition of Chief Counsel Advice

For purposes of this provision, Chief Counsel Advice is written advice or instruction prepared and issued by any national office component of the Office of Chief Counsel to field employees of the Service or the Office of Chief Counsel that convey certain legal interpretations or positions of the IRS or the Office of Chief Counsel concerning existing or former revenue provisions. For these purposes, the term "revenue provisions" includes, without limitation: the Internal Revenue Code itself; regulations, revenue rulings, revenue procedures, or other administrative interpretations or guidance, whether published or unpublished (including, for example, other Chief Counsel Advice); tax treaties; and court decisions and opinions. Chief Counsel Advice also includes legal interpretations of State law, foreign law, or other federal law relating to the assessment or collection of liabilities under revenue provisions.

Chief Counsel Advice may interpret or set forth policies concerning the internal reve-

nue laws either in general or as applied to specific taxpayers or groups of specific taxpayers. The definition is, however, not meant to include advice written with respect to nontax matters, including but not limited to employment law, conflicts of interest, or procurement matters.

The new statutory category of written determination encompasses certain existing categories of advisory memoranda or instructions written by the National Office of Chief Counsel to field personnel of either the IRS or the Office of Chief Counsel. Specifically, Chief Counsel Advice includes field service advice, technical assistance to the field, service center advice, litigation guideline memoranda, tax litigation bulletins, general litigation bulletins, and criminal tax bulletins. The definition applies not only to the case-specific field service advice issued from the offices of the Associate Chief Counsel (International), Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Assistant Chief Counsel (Field Service), which were at issue in the Tax Analysts decision, but any case-specific or noncase-specific written advice or instructions issued by the National Office of Chief Counsel to field personnel of either the IRS or the Office of Chief Counsel.

Moreover, Chief Counsel Advice includes any documents created subsequent to the enactment of this provision that satisfy the general statutory definition, regardless of their name or designation. Chief Counsel Advice also includes any such advice or instruction even if the organizations currently issuing them are reorganized or reconstituted as part of any IRS restructuring.

The new subsection covers written advice "issued" to field personnel of either the IRS or the Office of Chief Counsel in its final form. With respect to Chief Counsel Advice, issuance occurs when the Chief Counsel Advice has been approved within the national office component of the office of Chief Counsel in which the Chief Counsel Advice was proposed, signed by the person authorized to do so (usually the Assistant Chief Counsel or a Branch Chief), and sent to the field. Chief Counsel Advice does not include written recordings of informal telephonic advice by the National Office of Chief Counsel to field personnel of either the IRS or the Office of Chief Counsel. Drafts of Chief Counsel Advice sent to the field for review, criticism, or comment prior to approval within the National Office also need not be made public. However, Chief Counsel Advice may be treated as issued even if supplemental advice is contemplated. The Secretary is expected to issue regulations to clarify the distinction between issuance as it applies to Chief Counsel Advice and as it applies to other documents disclosed under section 6110.

The provision also allows the Secretary to promulgate regulations providing that additional types of advice or instruction issued by the Office of Chief Counsel (or components of the Office of Chief Counsel, such as regional or local Counsel offices) will be treated as Chief Counsel Advice and subject to public inspection pursuant to this provision. No inference shall be drawn from the failure of the Secretary to treat additional types of advice or instruction as Chief Counsel Advice in determining whether such advice or instruction is to be disclosed under FOIA.

As with other written determinations, Chief Counsel Advice may not be used or cited as precedent, except as the Secretary otherwise establishes by regulation.

Redaction process

Under this provision, Chief Counsel Advice will be redacted prior to their public release in a manner similar to that provided for pri-

ate letter rulings, technical advice memoranda, and determination letters. Specific taxpayers or groups of specific taxpayers who are the subject of Chief Counsel Advice will be afforded the opportunity to participate in the process of redacting the Chief Counsel Advice prior to their public release.

In addition, the new provision affords additional protection for certain governmental interests implicated by Chief Counsel Advice. Information may be redacted from Chief Counsel Advice under subsections (b) and (c) of the Freedom of Information Act, 5 U.S.C. sec. 552 (except, with respect to 5 U.S.C. sec. 552(b)(3), only material required to be withheld under a Federal statute, other than title 26, may be redacted), as those provisions have been, or shall be, interpreted by the courts of the United States. For those deletions that are discretionary, such as those under FOIA section 552(b)(5), it is expected that the Office of Chief Counsel and the IRS will apply any discretionary standards applicable to federal agencies in general or the Chief Counsel or the IRS in particular.²⁴

Under new section 6110(i), as with current section 6110(c)(1), identifying details consisting of names, addresses, and any other information that the Secretary determines could identify any person, including the taxpayer's representative, will be redacted, after the participation of the taxpayer in the redaction process. In some situations, information included in a Chief Counsel Advice (other than a name or address) may not identify a person as of the time the advice is made open to public inspection, but that information, together with information that is expected to be disclosed by another source at a later date, will serve to identify a person. Consequently, in deciding whether a Chief Counsel Advice contains identifying information, the Secretary is to take into account information that is available to the public at the time that the advice is made open to public inspection as well as information that is expected to be publicly available from other sources within a reasonable time after the Chief Counsel Advice is made open to public inspection. Generally, it is intended that the standard the IRS is to use in determining whether information will identify a person is a standard of a reasonable person generally knowledgeable with respect to the appropriate community. The standard is not, however, to be one of a person with inside knowledge of the particular taxpayer.

As under current section 6110, taxpayers who are the subject of Chief Counsel Advice, as well as members of the public, will be afforded the opportunity to challenge judicially the redaction determinations by the Secretary.

Relation to present law

The public inspection of Chief Counsel Advice is to be accomplished only pursuant to the rules and procedures set forth in section 6110, as amended, and not under those of any other provision of law, such as FOIA. This provision is not intended to affect the disclosure under FOIA, or under any other provision of law, of any documents not included within the definition of Chief Counsel Advice in new sections 6110(i)(1) and (i)(2). The only FOIA exemption affected by this provision is 5 U.S.C. section 552(b)(3), to the extent that it incorporates section 6103 of the Code. The timetable and the manner in which existing Chief Counsel Advice may ultimately be open to public inspection shall be governed

²⁴The current standards for the exercise of such discretion are set forth in the Internal Revenue Manual (part 1230, section 293(2)) and the Attorney General's October 4, 1993, Memorandum for Heads of Departments and Agencies.

²³117 F.3d at 617.

by this provision, except that the provision is inapplicable to Chief Counsel Advice that any federal district court has, prior to the date of enactment, ordered be disclosed. Disclosure of any documents that are subject to such a court order is to proceed pursuant to the order rather than this provision. Finally, no inference is intended with respect to the disclosure, under FOIA or any other provision of law, of any other documents produced by the Office of Chief Counsel that are not included in the definition of Chief Counsel Advice.

Effective date

The provision applies to Chief Counsel Advice issued more than ninety days after enactment. In addition, the provision contains certain rules governing disclosure of any document fitting the definition of Chief Counsel Advice issued after 1985 and before 90 days after the date of enactment by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international. It sets forth a schedule for the IRS to release such Chief Counsel Advice over a six year period after the date of enactment. Finally, additional advice or instruction that the Secretary determines by regulations to treat as Chief Counsel Advice shall be made public pursuant to this provision in accordance with the effective dates set forth in such regulations.

G. Low-Income Taxpayer Clinics (sec. 361 of the House bill and sec. 3601 of the Senate amendment)

Present Law

There are no provisions in present law providing for assistance to clinics that assist low-income taxpayers.

House Bill

The House bill provides that the Secretary is authorized to provide up to \$3,000,000 per year in matching grants to certain low-income taxpayer clinics. No clinic could receive more than \$100,000 per year. Eligible clinics would be those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language.

A "clinic" includes (1) a clinical program at an accredited law school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) which either represents low-income taxpayers or provides referral to qualified representatives.

Effective date.—Date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Secretary is authorized to provide up to \$6,000,000 per year in matching grants. A clinic also includes an accredited business school or an accredited accounting school. Grants can also be made to volunteer income tax assistance programs. Grants can also be made to training and technical assistance programs, up to 7.5 percent of total amount available for grants, and without regard to the \$100,000 per clinic per year limitation.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill, except that the overall limit is \$6,000,000 and clinical programs at accredited business schools or accounting schools would be eligible for grants.

H. Other Provisions

1. Cataloging complaints (sec. 372 of the House bill and sec. 3701 of the Senate amendment)

Present Law

The IRS is required to make an annual report to the Congress, beginning in 1997, on all

categories of instances involving allegations of misconduct by IRS employees, arising either from internally identified cases or from taxpayer or third-party initiated complaints. The report must identify the nature of the misconduct or complaint, the number of instances received by category, and the disposition of the complaints.

House Bill

The provision requires that, in collecting data for this report, records of taxpayer complaints of misconduct by IRS employees must be maintained on an individual employee basis. These individual records are not to be listed in the report.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Effective date.—January 1, 2000.

2. Archive of records of Internal Revenue Service (sec. 373 of the House bill and sec. 3702 of the Senate amendment)

Present Law

The IRS is obligated to transfer agency records to the National Archives and Records Administration ("NARA") for retention or disposal. The IRS is also obligated to protect confidential taxpayer records from disclosure. These two obligations have created conflict between NARA and the IRS. Under present law, the IRS determines whether records contain taxpayer information. Once the IRS has made that determination, NARA is not permitted to examine those records. NARA has expressed concern that the IRS may be using the disclosure prohibition to improperly conceal agency records with historical significance.

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding \$5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). Section 6103 does not authorize the disclosure of confidential return information to NARA.

House Bill

The House bill provides an exception to the disclosure rules to require IRS to disclose IRS records to officers or employees of NARA, upon written request from the U.S. Archivist, for purposes of the appraisal of such records for destruction or retention. The present-law prohibitions on and penalties for disclosure of tax information would generally apply to NARA.

Effective date.—Effective for requests made by the Archivist after the date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Payment of taxes (sec. 374 of the House bill and sec. 3703 of the Senate amendment)

Present Law

The Code provides that it is lawful for the Secretary to accept checks or money orders as payment for taxes, to the extent and under the conditions provided in regulations prescribed by the Secretary (sec. 6311). Those regulations state that checks or money orders should be made payable to the Internal Revenue Service.

House Bill

The House bill requires the Secretary or his delegate to establish such rules, regula-

tions, and procedures as are necessary to allow payment of taxes by check or money order to be made payable to the United States Treasury.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Clarification of authority of Secretary relating to the making of elections (sec. 375 of the House bill and sec. 3704 of the Senate amendment)

Present Law

Except as otherwise provided, elections provided by the Code are to be made in such manner as the Secretary shall by regulations or forms prescribe.

House Bill

The provision clarifies that, except as otherwise provided, the Secretary may prescribe the manner of making of any election by any reasonable means.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. IRS employee contacts (sec. 3705 of the Senate amendment)

Present Law

The IRS sends many different notices to taxpayers. Some (but not all) of these notices contain a name and telephone number of an IRS employee whom the taxpayer may call if the taxpayer has any questions.

House Bill

No provision.

Senate Amendment

The Senate amendment requires that all IRS notices and correspondence contain a name and telephone number of an IRS employee whom the taxpayer may call. In addition, to the extent practicable and advantageous to the taxpayer, the IRS should assign one employee to handle a matter with respect to a taxpayer until that matter is resolved.

The Senate amendment also requires that all IRS telephone helplines provide an option for any taxpayer questions to be answered in Spanish.

Further, the Senate amendment requires that all IRS telephone helplines provide an option for any taxpayer to talk to a live person in addition to hearing a recorded message. That person can then direct the taxpayer to other IRS personnel who can provide understandable information to the taxpayer.

Effective date.—Effective January 1, 2000.

Conference Agreement

The conference agreement generally follows the Senate amendment, with modifications. Any manually generated correspondence received by a taxpayer from the IRS must include in a prominent manner the name, telephone number, and unique identifying number of an IRS employee the taxpayer may contact with respect to the correspondence. Any other correspondence or notice received by a taxpayer from the IRS must include in a prominent manner a telephone number that the taxpayer may contact. An IRS employee must give a taxpayer during a telephone or personal contact the employee's name and unique identifying number. The requirements pertaining to a unique identifying number are effective six months after the date of enactment.

6. Use of pseudonyms by IRS employees (sec. 3706 of the Senate amendment)**Present Law**

The Federal Service Impasses Panel has ruled that if an employee believes that use of the employee's last name only will identify the employee due to the unique nature of the employee's last name, and/or nature of the office locale, then the employee may "register" a pseudonym with the employee's supervisor.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that an IRS employee may use a pseudonym only if (1) adequate justification, such as protecting personal safety, for using the pseudonym was provided by the employee as part of the employee's request, and (2) management has approved the request to use the pseudonym prior to its use.

Effective date.—Requests made after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Conferees of right in the National Office of IRS (sec. 3707 of the Senate amendment)**Present Law**

In any matter involving the submission of a substantive legal matter involving a specific taxpayer to the National Office of the IRS, the taxpayer is entitled to at least one conference (the "conference of right") at which it can explain its position.

House Bill

No provision.

Senate Amendment

The Senate amendment gives a taxpayer the right to limit participation in its conference of right to IRS national office personnel.

Effective date.—Requests made after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

8. Illegal tax protester designations (sec. 3708 of the Senate amendment)**Present Law**

The IRS designates individuals who meet certain criteria as "illegal tax protesters" in the IRS master file.

House Bill

No provision.

Senate Amendment

The Senate amendment prohibits the use by the IRS of the "illegal tax protester" designation. Any extant designation in the individual master file (the main computer file) must be removed and any other extant designation (such as on paper records that have been archived) must be disregarded. The IRS is, however, permitted to designate appropriate taxpayers as nonfilers. The IRS must remove the nonfiler designation once the taxpayer has filed valid tax returns for two consecutive years and paid all taxes shown on those returns.

Effective date.—Date of enactment, except that the removal of any designation from the master file, is not required to begin before January 1, 1999.

Conference Agreement

The conference agreement follows the Senate amendment. While this provision prohibits the use by the IRS of the "illegal tax protester" designation, it does allow the IRS to continue its current practice of tracking

"potentially dangerous taxpayers." The conferees recognize the potential hazards connected with the assessment and collection of taxes, and this provision is not intended to jeopardize the safety of IRS employees. Accordingly, if the IRS needs to implement additional procedures, such as the maintenance of appropriate records, in connection with this provision so as to ensure IRS employees' safety, it has the authority to do so.

9. Provision of confidential information to Congress by whistleblowers (sec. 3709 of the Senate amendment)**Present Law**

Tax return information generally may not be disclosed, except as specifically provided by statute. The Secretary of the Treasury may furnish tax return information to the Senate Committee on Finance, the House Committee on Ways and Means, and the Joint Committee on Taxation upon a written request from the chairmen of such committees. If the information can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, the information may be furnished to the committee only while sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

House Bill

No provision.

Senate Amendment

The Senate amendment allows any person who is (or was) authorized to receive confidential tax return information to disclose tax return information directly to the Chairman of the Senate Committee on Finance, the Chairman of the House Committee on Ways and Means, or the Chief of Staff of the Joint Committee on Taxation provided: (1) such disclosure is for the purpose of disclosing an incident of IRS employee or taxpayer abuse, and (2) the Chairman of the committee to which the information will be disclosed gives prior approval for the disclosure in writing.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement provides that any person (i.e., a whistleblower) who otherwise has or had access to any return or return information under section 6103 may disclose such return or return information to the House Ways and Means Committee, the Senate Finance Committee, or the Joint Committee on Taxation or to any individual authorized by one of those committees to receive or inspect any return or return information if such person (the whistleblower) believes such return or return information may relate to evidence of possible misconduct, maladministration, or taxpayer abuse. Disclosure to one of these committees could be made either to the Chairman or to the full committee (sitting in closed executive session), but would not be permitted to be made to an individual Member of Congress (unless explicitly authorized as an agent). No inference is intended that such whistleblower disclosures are not permitted under present law.

Effective date.—Date of enactment.

10. Listing of local IRS telephone numbers and addresses (sec. 3710 of the Senate amendment)**Present Law**

The IRS is not statutorily required to publish the local telephone number or address of its local offices.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS, as soon as is practicable but no later than 180

days after the date of enactment, to publish addresses and local telephone numbers of local IRS offices in appropriate local telephone directories.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement generally follows the Senate amendment. The conferees intend that (1) the IRS not be required to publish in more than one directory in any local area and (2) publication in alternate language directories is permissible.

Effective date.—As soon as is practicable.

11. Identification of return preparers (sec. 3711 of the Senate amendment)**Present Law**

Any return or claim for refund prepared by an income tax return preparer must bear the social security number of the return preparer, if such preparer is an individual.

House Bill

No provision.

Senate Amendment

The Senate amendment authorizes the IRS to approve alternatives to social security numbers to identify tax return preparers.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

12. Offset of past-due, legally enforceable State income tax obligations against overpayments (sec. 3712 of the Senate amendment)**Present Law**

Overpayments of Federal tax may be used to pay past-due child support and debts owed to Federal agencies, without the consent of the taxpayer. Such amount for past-due child support may be paid directly to a State. Present law provides that offsets are made in the following priority: (1) child support and (2) other Federal debts, in the order in which such debts accrued.

House Bill

No provision.

Senate Amendment

The Senate amendment permits States to participate in the IRS refund offset program for specified past-due, legally enforceable State income tax debts, providing the person making the Federal tax overpayment has shown on the Federal return for the taxable year of the overpayment an address that is within the State seeking the tax offset. The offset applies after the offsets provided in present law for internal revenue tax liabilities, past-due support, and past-due, legally enforceable obligations owed a Federal agency. The offset occurs before the designation of any refund toward future Federal tax liability.

Effective date.—Federal income tax refunds payable after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications. The provision permits the Secretary to prescribe additional conditions (pursuant to new section 6402(e)(4)(D)) to ensure that the determination is valid that the State or local income tax liability is past-due and legally enforceable. The conferees intend that this include consideration of questions that may arise as a result of the taxpayer being a Native American.

Effective date.—Federal income tax refunds payable after December 31, 1999.

13. Moratorium regarding regulations under Notice 98-11 (sec. 3713(a)(1) of the Senate amendment)**Present Law****Overview**

U.S. citizens and residents and U.S. corporations are taxed currently by the United

States on their worldwide income, subject to a credit against U.S. tax on foreign-source income for foreign income taxes paid with respect to such income. A foreign corporation generally is not subject to U.S. tax on its income from operations outside the United States.

Income of a foreign corporation generally is taxed by the United States when it is repatriated to the United States through payment to the corporation's U.S. shareholders, subject to a foreign tax credit. However, various regimes imposing current U.S. tax on income earned through a foreign corporation are reflected in the Code. One anti-deferral regime set forth in the Code is the controlled foreign corporation rules of subpart F (secs. 951-964).

A controlled foreign corporation ("CFC") is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957). Stock ownership includes not only stock owned directly, but also stock owned indirectly or constructively (sec. 958).

The United States generally taxes the U.S. 10-percent shareholders of a CFC currently on their pro rata shares of certain income of the CFC (so-called "subpart F income") (sec. 951). In effect, the Code treats those shareholders as having received a current distribution out of the CFC's subpart F income. Such shareholders also are subject to current U.S. tax on their pro rata shares of the CFC's earnings invested in U.S. property (sec. 951). The foreign tax credit may reduce the U.S. tax on these amounts.

Subpart F income includes, among other items, foreign base company income (sec. 952). Foreign base company income, in turn, includes foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income and foreign base company oil related income (sec. 954). Foreign personal holding company income includes, among other items, dividends, interest, rents, and royalties. An exception from foreign personal holding company income applies to certain dividends and interest received from a related person which is created or organized in the same country as the CFC and which has a substantial part of its assets in that country, and to certain rents and royalties received from a related person for the use of property in the same country in which the CFC was created or organized (the so-called "same-country exception").

Foreign base company sales income includes income derived by a CFC from certain related-party transactions, including the purchase of personal property from a related person and its sale to any person, the purchase of personal property from any person and its sale to a related person, and the purchase or sale of personal property on behalf of a related person, where the property which is purchased or sold is manufactured outside the country in which the CFC was created or organized and the property is purchased or sold for use or consumption outside such foreign country. A special branch rule applies for purposes of determining a CFC's foreign base company sales income. Under this rule, a branch of a CFC is treated as a separate corporation (only for purposes of determining the CFC's foreign base company sales income) where the activities of the CFC through the branch outside the CFC's country of incorporation have substantially the same effect as if such branch were a subsidiary.

Because of differences in U.S. and foreign laws, it is possible for a taxpayer to enter

into transactions that are treated in one manner for U.S. tax purposes and in another manner for foreign tax purposes. These transactions are referred to as hybrid transactions. For example, a hybrid transaction may involve the use of an entity that is treated as a corporation for purposes of the tax law of one jurisdiction but is treated as a branch or partnership for purposes of the tax law of another jurisdiction.

Notice 98-11 and the regulations issued thereunder

Notice 98-11, issued on January 16, 1998, addressed the treatment of hybrid branches under the subpart F provisions of the Code. The Notice stated that the Treasury Department and the Internal Revenue Service have concluded that the use of certain arrangements involving hybrid branches is contrary to the policy and rules of subpart F. The hybrid branch arrangements identified in Notice 98-11 involve structures that are characterized for U.S. tax purposes as part of a CFC but are characterized for purposes of the tax law of the country in which the CFC is incorporated as a separate entity. The Notice stated that regulations will be issued to prevent the use of hybrid branch arrangements to reduce foreign tax while avoiding the corresponding creation of subpart F income. The Notice stated that such regulations will provide that the branch and the CFC will be treated as separate corporations for purposes of subpart F. The Notice also stated that similar issues raised under subpart F by certain partnership or trust arrangements will be addressed in separate regulation projects.

On March 23, 1998, temporary and proposed regulations were issued to address the issues raised in Notice 98-11 and to address certain partnership and other issues raised under subpart F. Under the regulations, certain payments between a CFC and its hybrid branch or between hybrid branches of the CFC (so-called "hybrid branch payments") are treated as giving rise to subpart F income. The regulations generally provide that non-subpart F income of the CFC, in the amount of the hybrid branch payment, is recharacterized as subpart F income of the CFC if: (1) the hybrid branch payment reduces the foreign tax of the payor, (2) the hybrid branch payment would have been foreign personal holding company income if made between separate CFCs, and (3) there is a disparity between the effective tax rate on the payment in the hands of the payee and the effective tax rate that would have applied if the income had been taxed in the hands of the payor. The regulations also apply to other hybrid branch arrangements involving a partnership, including a CFC's proportionate share of any hybrid branch payment made between a partnership in which the CFC is a partner and a hybrid branch of the partnership or between hybrid branches of such a partnership. Under the regulations, if a partnership is treated as fiscally transparent by the CFC's taxing jurisdiction, the recharacterization rules are applied by treating the hybrid branch payment as if it had been made directly between the CFC and the hybrid branch, or as if the hybrid branches of the partnership were hybrid branches of the CFC, as applicable. If the partnership is treated as a separate entity by the CFC's taxing jurisdiction, the recharacterization rules are applied to treat the partnership as if it were a CFC.

The regulations also address the application of the same-country exception to the foreign personal holding company income rules under subpart F in the case of certain hybrid branch arrangements. Under the regulations, the same-country exception applies to payments by a CFC to a hybrid branch of a related CFC only if the payment would

have qualified for the exception if the hybrid branch had been a separate CFC incorporated in the jurisdiction in which the payment is subject to tax (other than a withholding tax). The regulations provide additional rules regarding the application of the same-country exception in the case of certain hybrid arrangements involving a partnership.

The regulations generally apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into or substantially modified on or after January 16, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into before January 16, 1998 and not substantially modified on or after that date.

In the case of certain hybrid arrangements involving partnerships, the regulations generally apply to amounts paid or accrued pursuant to such arrangements entered into or substantially modified on or after March 23, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to such arrangements entered into before March 23, 1998 and not substantially modified on or after that date.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that no temporary or final regulations with respect to Notice 98-11 may be implemented prior to six months after the date of enactment of this provision. This moratorium applies to the regulations with respect to hybrid branches and to the regulations with respect to hybrid arrangements involving partnerships. It is intended that the moratorium delaying implementation of the regulations would not require a modification to the effective dates of the regulations. No inference is intended regarding the authority of the Department of the Treasury or the Internal Revenue Service to issue the Notice or the regulations.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment. The conferees have agreed not to include the Senate amendment because the Department of the Treasury has withdrawn Notice 98-11 and has announced its intention to withdraw the temporary and proposed regulations issued under Notice 98-11, and to reissue regulations in proposed form to be finalized no earlier than January 1, 2000. See Notice 98-35, 1998-26 I.R.B. 1. The conferees expect that the Congress will consider the international tax policy issues relating to the treatment of hybrid transactions under the subpart F provisions of the Code, and will consider taking legislative action as deemed appropriate. In this regard, the conferees expect that the Congress will consider the impact of any legislation or administrative guidance in this area on affected taxpayers and industries. The conferees strongly recommend that the Department of the Treasury also take into account the impact of any administrative guidance in this area on affected taxpayers and industries. No inference is intended regarding the authority of the Department of the Treasury or the Internal Revenue Service to issue the Notice or the regulations, or to issue any other notice or regulation which reaches the same or similar results with respect to the treatment of hybrid transactions under subpart F.

14. Sense of the Senate regarding Notices 98-5 and 98-11 (secs. 3713(a)(2) and (b) of the Senate amendment)

Present Law

Overview

U.S. citizens and residents and U.S. corporations are taxed currently by the United

States on their worldwide income. U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate limitations are applied to specific categories of income.

A foreign corporation generally is not subject to U.S. tax on its income from operations outside the United States. Income of a foreign corporation generally is taxed by the United States when it is repatriated to the United States through payment to the corporation's U.S. shareholders, subject to a foreign tax credit. However, various regimes imposing current U.S. tax on income earned through a foreign corporation are reflected in the Code. One anti-deferral regime set forth in the Code is the controlled foreign corporation rules of subpart F (secs. 951-964).

A controlled foreign corporation ("CFC") is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957). Stock ownership includes not only stock owned directly, but also stock owned indirectly or constructively (sec. 958).

The United States generally taxes the U.S. 10-percent shareholders of a CFC currently on their pro rata shares of certain income of the CFC (so-called "subpart F income") (sec. 951). In effect, the Code treats those shareholders as having received a current distribution out of the CFC's subpart F income. Such shareholders also are subject to current U.S. tax on their pro rata shares of the CFC's earnings invested in U.S. property (sec. 951). The foreign tax credit may reduce the U.S. tax on these amounts.

Subpart F income includes, among other items, foreign base company income (sec. 952). Foreign base company income, in turn, includes foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income and foreign base company oil related income (sec. 954). Foreign personal holding company income includes, among other items, dividends, interest, rents, and royalties. An exception from foreign personal holding company income applies to certain dividends and interest received from a related person which is created or organized in the same country as the CFC and which has a substantial part of its assets in that country, and to certain rents and royalties received from a related person for the use of property in the same country in which the CFC was created or organized (the so-called "same-country exception").

Foreign base company sales income includes income derived by a CFC from certain related-party transactions, including the purchase of personal property from a related person and its sale to any person, the purchase of personal property from any person and its sale to a related person, and the purchase or sale of personal property on behalf of a related person, where the property which is purchased or sold is manufactured outside the country in which the CFC was created or organized and the property is purchased or sold for use or consumption outside such foreign country. A special branch rule applies for purposes of determining a CFC's foreign base company sales income. Under this rule, a branch of a CFC is treated as a separate corporation (only for purposes of determining the CFC's foreign base company sales income) where the activities of the CFC through the branch outside the CFC's country of incorporation have sub-

stantially the same effect as if such branch were a subsidiary.

Because of differences in U.S. and foreign laws, it is possible for a taxpayer to enter into transactions that are treated in one manner for U.S. tax purposes and in another manner for foreign tax purposes. These transactions are referred to as hybrid transactions. For example, a hybrid transaction may involve the use of an entity that is treated as a corporation for purposes of the tax law of one jurisdiction but is treated as a branch or partnership for purposes of the tax law of another jurisdiction.

Notices 98-5 and 98-11

Notice 98-5, issued on December 23, 1997, addresses the treatment of certain types of transactions under the foreign tax credit provisions of the Code. The Notice states that the Treasury Department and the Internal Revenue Service have concluded that the use of certain transactions creates the potential for foreign tax credit abuse. The Notice states that such transactions typically involve either: (1) the acquisition of an asset that generates an income stream (e.g., royalties or interest) subject to a foreign withholding tax, or (2) the effective duplication of tax benefits through the use of certain structures designed to exploit inconsistencies between U.S. and foreign tax laws. The Notice includes five specific transactions as illustrations of arrangements creating the potential for foreign tax credit abuse. The Notice states that it is intended that regulations will be issued to disallow foreign tax credits for abusive transactions in cases where the reasonably expected economic profit from the transaction is insubstantial compared to the value of the foreign tax credits expected to be obtained as a result of the arrangement. The Notice further states that it is intended that regulations generally will apply with respect to such transactions for taxes paid or accrued on or after December 23, 1997. Regulations have not yet been issued under Notice 98-5.

Notice 98-11, issued on January 16, 1998, addressed the treatment of hybrid branches under the subpart F provisions of the Code. The Notice stated that the Treasury Department and the Internal Revenue Service have concluded that the use of certain arrangements involving hybrid branches is contrary to the policy and rules of subpart F. The hybrid branch arrangements identified in Notice 98-11 involve structures that are characterized for U.S. tax purposes as part of a CFC but are characterized for purposes of the tax law of the country in which the CFC is incorporated as a separate entity. The Notice stated that regulations will be issued to prevent the use of hybrid branch arrangements to reduce foreign tax while avoiding the corresponding creation of subpart F income. The Notice stated that such regulations will provide that the branch and the CFC will be treated as separate corporations for purposes of subpart F. The Notice also stated that similar issues raised under subpart F by certain partnership or trust arrangements will be addressed in separate regulation projects.

On March 23, 1998, temporary and proposed regulations were issued to address the issues raised in Notice 98-11 and to address certain partnership and other issues raised under subpart F. Under the regulations, certain payments between a CFC and its hybrid branch or between hybrid branches of the CFC (so-called "hybrid branch payments") are treated as giving rise to subpart F income. The regulations generally provide that non-subpart F income of the CFC, in the amount of the hybrid branch payment, is recharacterized as subpart F income of the CFC if: (1) the hybrid branch payment reduces the foreign tax of the payor, (2) the hy-

brid branch payment would have been foreign personal holding company income if made between separate CFCs, and (3) there is a disparity between the effective tax rate on the payment in the hands of the payee and the effective tax rate that would have applied if the income had been taxed in the hands of the payor. The regulations also apply to other hybrid branch arrangements involving a partnership, including a CFC's proportionate share of any hybrid branch payment made between a partnership in which the CFC is a partner and a hybrid branch of the partnership or between hybrid branches of such a partnership. Under the regulations, if a partnership is treated as fiscally transparent by the CFC's taxing jurisdiction, the recharacterization rules are applied by treating the hybrid branch payment as if it had been made directly between the CFC and the hybrid branch, or as if the hybrid branches of the partnership were hybrid branches of the CFC, as applicable. If the partnership is treated as a separate entity by the CFC's taxing jurisdiction, the recharacterization rules are applied to treat the partnership as if it were a CFC.

The regulations also address the application of the same-country exception to the foreign personal holding company income rules under subpart F in the case of certain hybrid branch arrangements. Under the regulations, the same-country exception applies to payments by a CFC to a hybrid branch of a related CFC only if the payment would have qualified for the exception if the hybrid branch had been a separate CFC incorporated in the jurisdiction in which the payment is subject to tax (other than a withholding tax). The regulations provide additional rules regarding the application of the same-country exception in the case of certain hybrid arrangements involving a partnership.

The regulations generally apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into or substantially modified on or after January 16, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into before January 16, 1998 and not substantially modified on or after that date.

In the case of certain hybrid arrangements involving partnerships, the regulations generally apply to amounts paid or accrued pursuant to such arrangements entered into or substantially modified on or after March 23, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to such arrangements entered into before March 23, 1998 and not substantially modified on or after that date.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that it is the sense of the Senate that the Department of the Treasury and the Internal Revenue Service should withdraw Notice 98-11 and the regulations issued thereunder, and that the Congress, and not the Department of the Treasury or the Internal Revenue Service, should determine the international tax policy issues relating to the treatment of hybrid transactions under the subpart F provisions of the Code.

The Senate amendment further provides that it is the sense of the Senate that the Department of the Treasury and the Internal Revenue Service should limit any regulations issued under Notice 98-5 to the specific transactions described therein. In addition, such regulations should: (a) not affect transactions undertaken in the ordinary course of business, (b) not have an effective date any earlier than the date of issuance of proposed regulations, and (c) be issued in accordance

with normal regulatory procedures which include an opportunity for comment. Nothing in this sense of the Senate should be construed to limit the ability of the Department of the Treasury or the Internal Revenue Service to address abusive transactions.

Effective date.—Date of enactment.

Conference Agreement

Notices 98-5 and 98-11

The conference agreement does not include the Senate amendment. The conferees are aware that the Department of the Treasury has withdrawn Notice 98-11 and has announced its intention to withdraw the temporary and proposed regulations issued under Notice 98-11, and to reissue regulations in proposed form to be finalized no earlier than January 1, 2000. See Notice 98-35, 1998-26 I.R.B. 1. The conferees expect that the Congress will consider the international tax policy issues relating to the treatment of hybrid transactions under the subpart F provisions of the Code, and will consider taking legislative action as deemed appropriate. In this regard, the conferees expect that the Congress will consider the impact of any legislation or administrative guidance in this area on affected taxpayers and industries. The conferees strongly recommend that the Department of the Treasury also take into account the impact of any administrative guidance in this area on affected taxpayers and industries. No inference is intended regarding the authority of the Department of the Treasury or the Internal Revenue Service to issue the Notice or the regulations, or to issue any other notice or regulation which reaches the same or similar results with respect to the treatment of hybrid transactions under subpart F.

The conferees believe that regulations under Notice 98-5 should be issued in accordance with normal regulatory procedures which include an opportunity for public comment. The conferees acknowledge recent actions by the Department of the Treasury to address legitimate taxpayer concerns regarding Notice 98-5 without compromising the ability of the Department of the Treasury or the Internal Revenue Service to address abusive transactions.

The conferees are concerned about the potential disruptive effect of the issuance of an administrative notice that describes general principles to be reflected in regulations that will be issued in the future, but provides that such future regulations will be effective as of the date of issuance of the notice. The conferees strongly encourage the Department of the Treasury and the Internal Revenue Service to limit similar types of action in the future.

Other matters

The conferees are aware of the Department of the Treasury's commitment to withdraw temporary and proposed regulations issued on March 2, 1998, with respect to a special sourcing rule under the foreign sales corporation provisions, and to reinstate the rule contained in the prior temporary regulations. See Temp. Treas. Reg. sec. 1.927(e)-1T, T.D. 8764 (March 2, 1998). In good faith reliance on this commitment, the conferees are deferring action on this issue at this time.

15. Combined employment tax reporting demonstration project (sec. 3715 of the Senate amendment)

Present Law

Traditionally, Federal tax forms are filed with the Federal government and State tax forms are filed with individual States. This necessitates duplication of items common to both returns.

The Taxpayer Relief Act permitted implementation of a demonstration project to assess the feasibility and desirability of ex-

panding combined reporting in the future. There are several limitations on the demonstration project. First, it is limited to the State of Montana and the IRS. Second, it is limited to employment tax reporting. Third, it is limited to disclosure of the name, address, TIN, and signature of the taxpayer, which is information common to both the Montana and Federal portions of the combined form. Fourth, it is limited to a period of five years.

House Bill

No provision.

Senate Amendment

The Senate amendment authorizes a parallel demonstration project with Iowa.

Effective date.—Effective on the date of enactment and will expire on the date five years after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

16. Reporting requirements relating to education tax credits (sec. 3716 of the Senate amendment)

Present Law

Individual taxpayers are allowed to claim a nonrefundable HOPE credit against Federal income taxes up to \$1,500 per student per year for qualified tuition and related expenses paid for the first two years of the student's post-secondary education in a degree program. A Lifetime Learning credit against Federal income taxes equal to 20 percent of qualified expenses (up to a maximum credit of \$1,000 per taxpayer return for 1998 through 2002 and \$2,000 per taxpayer return after 2002) is also available. Qualified tuition and related expenses do not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit (e.g., scholarship or fellowship grants).

Code section 6050S requires information reporting by eligible educational institutions which receive payments for qualified tuition and related expenses, and certain other persons who make reimbursement or refunds of qualified tuition and related expenses, in order to assist students, their parents, and the IRS in calculating the amount of the HOPE and Lifetime Learning credits potentially available. Section 6050S(b) provides that the annual information report to the Secretary must be in the form prescribed by the Secretary and must contain the following: (1) the name, address, and taxpayer identification number (TIN) of the individual which respect to whom the qualified tuition and related expenses were received or the reimbursement or refund was paid; (2) the name, address, and TIN of any individual certified by the student as the taxpayer who will claim that student as a dependent for purposes of the deduction under section 151 for any taxable years ending with or within the year for which the information return is filed; (3) the aggregate amount of payments of qualified tuition and related expenses received by the eligible educational institution and the aggregate amount of reimbursements or refunds (or similar amounts) paid during the calendar year with respect to the student; and (4) such other information as the Secretary may prescribe. Under section 6050S(d), an educational institution also must provide to each person identified on the information return submitted to the Secretary (e.g., the student and his or her parent(s)) a written statement showing the name, address, and phone number of the reporting person's information contact, and the amounts set forth in (3) above.

On December 22, 1997, the Department of Treasury issued Notice 97-73 setting forth

the information reporting requirements under section 6050S for 1998. Notice 97-73 describes who must report information and the nature of the information that must be reported for 1998. In general, the required reporting under Notice 97-73 is more limited than that which will ultimately be required under section 6050S upon the issuance of final regulations. Accordingly, for 1998, educational institutions must report the following information: (1) the name, address, and TIN of the educational institution; (2) the name, address, and TIN of the student with respect to whom payments of qualified tuition and related expenses were received during 1998; (3) an indication as to whether the student was enrolled for at least half the full-time academic workload during any academic period commencing in 1998; and (4) an indication as to whether the student was enrolled exclusively in a program or programs leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential. Educational institutions must provide to students the information listed above, as well as the phone number of the information contact at the school. Information returns must be provided to students by February 1, 1999 and filed with the IRS by March 1, 1999. Notice 97-73 states that until final regulations are adopted, no penalties will be imposed under sections 6721 and 6722 for failure to file correct information returns or to furnish correct statements to the individuals with respect to whom information reporting is required under section 6050S. In addition, Notice 97-73 states that, even after final regulations are adopted, no penalties will be imposed under sections 6721 and 6722 for 1998 if the institution made a good faith effort to file information returns and furnish statements in accordance with Notice 97-73.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the information reporting requirements under section 6050S. In addition to reporting the aggregate amount of payments for qualified tuition and related expenses received by the educational institution with respect to a student, the institution must report any grant amount received by the student and processed through the institution during the applicable calendar year. The institution is not required to report on grant aid that is paid directly to the student and is not processed through the institution. In addition, an educational institution is required to report only the aggregate amount of reimbursements or refunds paid to a student by the institution (and not by any other party).

Effective date.—The provision applies to returns required to be filed with respect to taxable years beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, but includes certain additional clarifications intended to minimize the reporting burdens imposed on educational institutions while preserving the ability of the IRS to monitor compliance with respect to the HOPE Scholarship and Lifetime Learning credits. In particular, the conference agreement clarifies that the definition of the term "qualified tuition and related expenses" shall be as set forth in section 25A, determined without regard to section 25A(g)(2) (which requires adjustments for certain scholarships). Eligible educational institutions that receive payments of qualified tuition and related expenses (or reimburse or refund such payments) are required separately to report the following items with respect to each student under

section 6050S(b)(2)(C): (1) the aggregate amount of qualified tuition and related expenses (not including certain expenses relating to sports, games, or hobbies, or nonacademic fees); (2) any grant amount (whether or not excludable from income) received by such individual for payment of costs of attendance and processed through the institution during the applicable calendar year; and (3) the aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year by the institution.

The conferees understand that the Department of Treasury is in the process of issuing regulatory guidance with respect to the education credit reporting requirements. In developing such guidance, the conferees urge Treasury to minimize the reporting burdens imposed on educational institutions in connection with the HOPE Scholarship and Lifetime Learning credits. For example, section 472(1) of the Higher Education Act contains a definition of tuition and fees that is used in calculating a student's total "cost of attendance." The conferees urge Treasury to conform the definition of "qualified tuition and related expenses" for purposes of the HOPE Scholarship and Lifetime Learning credits to the definition set forth in section 472(1) to the extent possible, so as to minimize the additional reporting burden on educational institutions.

In general, the conferees expect that the regulatory guidance regarding the education credit reporting requirements will have an effective date that will provide educational institutions with sufficient time, after any notice and comment period, to implement additional required reporting. In addition, although the provision generally applies to taxable years beginning after December 31, 1998, the conferees intend that no reporting beyond the reporting currently required in Notice 97-73 would be required of educational institutions until such final regulatory guidance is available.

In furtherance of the objective of minimizing the reporting burden on educational institutions, the conferees note that, pursuant to the regulatory authority granted in section 25A(i), Treasury may exempt educational institutions from the reporting requirements with respect to certain categories of students, such as non-degree students enrolled in a course for which academic credit is not granted by the institution, provided that such exemptions do not undermine the overall compliance objectives of the provision. The conferees further expect that Treasury will provide clarification regarding the reasonable cause exception contained in section 6724(a) as it may apply to the education information reporting requirements. Finally, the conferees urge that any update and modernization of IRS computer systems incorporate the capacity to match a dependent's TIN with the return filed by the person claiming the individual as a dependent.

I. Studies

1. Administration of penalties and interest (sec. 381 of the House bill and sec. 3801 of the Senate amendment)

Present Law

The last major comprehensive revision of the overall penalty structure in the Internal Revenue Code was the "Improved Penalty Administration and Compliance Tax Act," enacted as part of the Omnibus Budget Reconciliation Act of 1989.

House Bill

The House bill requires the Joint Committee on Taxation to conduct a study reviewing the administration and implementation of the penalty reform provisions of the Om-

nibus Budget Reconciliation Act of 1989, and making any legislative and administrative recommendations it deems appropriate to simplify penalty administration and reduce taxpayer burden.

Effective date.—The report must be provided not later than nine months after the date of enactment.

Senate Amendment

The Senate amendment requires the Joint Committee on Taxation and the Treasury to each conduct a separate study reviewing the interest and penalty provisions of the Code, and making any legislative and administrative recommendations it deems appropriate to simplify penalty administration and reduce taxpayer burden.

Effective date.—The reports must be provided not later than nine months after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees expect that the Joint Committee on Taxation and the Treasury Department studies will examine whether the current penalty and interest provisions encourage voluntary compliance. The studies should also consider whether the provisions operate fairly, whether they are effective deterrents to undesired behavior, and whether they are designed in a manner that promotes efficient and effective administration of the provisions by the IRS. The conferees expect that the Joint Committee on Taxation and the Treasury Department will consider comments from taxpayers and practitioners on issues relevant to the studies.

Effective date.—The reports must be provided not later than one year after the date of enactment.

2. Confidentiality of tax return information (sec. 382 of the House bill and sec. 3802 of the Senate amendment)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code. Unauthorized disclosure is a felony punishable by a fine not exceeding \$5,000 or imprisonment of not more than five years, or both. An action for civil damages also may be brought for unauthorized disclosure. No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives.

House Bill

The House bill requires the Joint Committee on Taxation to conduct a study on provisions regarding taxpayer confidentiality. The study is to examine:

- (1) present-law protections of taxpayer privacy;
- (2) the need for third parties to use tax return information; and
- (3) the ability to achieve greater levels of voluntary compliance by allowing the public to know who is legally required to file tax returns but does not do so.

Effective date.—The findings of the study, along with any recommendations, are required to be reported to the Congress no later than one year after the date of enactment.

Senate Amendment

The Senate amendment requires the Joint Committee on Taxation and Treasury to each conduct a separate study on provisions regarding taxpayer confidentiality. The studies are to examine:

- (1) present-law protections of taxpayer privacy;

(2) the need, if any, for third parties to use tax return information;

(3) whether greater levels of voluntary compliance can be achieved by allowing the public to know who is legally required to file tax returns but does not do so;

(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code with those elsewhere in the United States Code (such as the Freedom of Information Act);

(5) whether return information should be disclosed to a State unless the State has first notified personally in advance each person with respect to whom information has been requested; and

(6) the impact on taxpayer privacy of sharing tax information for the purposes of enforcing State and local tax laws (other than income tax laws).

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement generally follows the Senate amendment. The conference agreement adds to the study an examination of whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations (described in section 501 of the Code). The conference agreement deletes from the study an examination of whether return information should be disclosed to a State unless the State has first notified personally in advance each person with respect to whom information has been requested.

Effective date.—The findings of the study, along with any recommendations, are required to be reported to the Congress no later than 18 months after the date of enactment.

3. Study of transfer pricing enforcement (sec. 3803 of the Senate amendment)

Present Law

Section 482 authorizes the Secretary of the Treasury to distribute, apportion or allocate gross income, deductions, credits or allowances between or among commonly controlled parties to prevent tax evasion or to clearly reflect income. Regulations under section 482 generally provide for certain transfer pricing methods that are used to determine whether prices for transactions between or among commonly controlled parties are based on arm's-length terms.

House Bill

No provision.

Senate Amendment

The Senate amendment directs the Internal Revenue Service Oversight Board to undertake a study on whether the Internal Revenue Service has the resources to prevent tax avoidance by companies using unlawful transfer pricing methods. The Senate amendment also directs the Internal Revenue Service to assist in the study by analyzing its enforcement of transfer pricing abuses, including the effectiveness of current enforcement tools used to ensure compliance with section 482 and the scope of nonpayment of U.S. taxes by reason of such abuses. The findings of the study, including recommendations to improve the Internal Revenue Service's enforcement tools to ensure that multinational companies doing business in the United States pay their fair share of U.S. taxes, are required to be reported to the Congress no later than one year after the date of enactment.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

4. Noncompliance with internal revenue laws by taxpayers (sec. 3804 of the Senate amendment)

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Joint Committee on Taxation, the Secretary of the Treasury and the Commissioner of the Internal Revenue Service must jointly conduct a study of taxpayers' willful noncompliance with the tax law. The study must be reported to the Congress within one year of the date of enactment.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with clarifications that the study is to examine noncompliance with the internal revenue laws by taxpayers (including willful noncompliance and noncompliance due to tax law complexity or other factors). Treasury and IRS are to conduct the study, in consultation with the Joint Committee on Taxation.

5. Payments for informants (sec. 3714 of the Senate amendment)

Present Law

Under present law, rewards may be paid for information relating to civil violations, as well as criminal violations. Present law also provides that the rewards are paid out of the proceeds of amounts (other than interest) collected by reason of the information provided. An annual report on the rewards program is required.

House Bill

No provision.

Senate Amendment

The Senate amendment requires a study and report by Treasury to the Congress (within one year of the date of enactment) of the present-law reward program (including results) and any legislative or administrative recommendations regarding the program and its application.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE IV. CONGRESSIONAL ACCOUNTABILITY FOR THE IRS

A. Review of Requests for GAO Investigations of the IRS (sec. 401 of the House bill)

Present Law

There is currently no specific statutory requirement that requests for investigations by the General Accounting Office ("GAO") relating to the IRS be reviewed by the Joint Committee on Taxation (the "Joint Committee"). However, some of the studies that GAO conducts relating to taxation and oversight of the IRS require access under section 6103 of the Code to confidential tax returns and return information. Under section 6103, the GAO may inform the Joint Committee of its initiation of an audit of the IRS and obtain access to confidential taxpayer information unless, within 30 days, 3/5ths of the Members of the Joint Committee disapprove of the audit. This provision has not been utilized; the GAO generally seeks advance access to confidential taxpayer return information from the Joint Committee.

House Bill

Under the House bill, the Joint Committee on Taxation reviews all requests (other than requests by the chair or ranking member of a Committee or Subcommittee of the Congress) for investigations of the IRS by the

GAO and approves such requests when appropriate. In reviewing such requests, the Joint Committee is to eliminate overlapping investigations, ensure that the GAO has the capacity to handle the investigation, and ensure that investigations focus on areas of primary importance to tax administration.

The provision does not change the present-law rules under section 6103.

Effective date.—The House bill provision is effective with respect to requests for GAO investigations made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conferees intend that the provision exclude requests made by the chairman or ranking member of a committee or subcommittee, investigations required by statute, and work initiated by GAO under its basic statutory authorities.

Effective date.—Same as the House bill.

B. Joint Congressional Hearings and Coordinated Oversight Reports (secs. 401 and 402 of the House bill)

Present Law

Under the present Congressional committee structure, a number of committees have jurisdiction with respect to IRS oversight. The committees most responsible for IRS oversight are the House Committees on Ways and Means, Appropriations, Government Reform and Oversight, the corresponding Senate Committees on Finance, Appropriations, and Governmental Affairs, and the Joint Committee on Taxation. While these Committees have a shared interest in IRS matters, they typically act independently, and have separate hearings and make separate investigations into IRS matters. Each committee also has jurisdiction over certain issues. For example, the House Ways and Means Committee and the Senate Finance Committee have exclusive jurisdiction over changes to the tax laws. Similarly, the House and Senate Appropriations Committees have exclusive jurisdiction over IRS annual appropriations. The Joint Committee does not have legislative jurisdiction, but has significant responsibilities with respect to tax matters and IRS oversight.

House Bill

Under the House bill, there will be two annual joint hearings of two majority and one minority members of each of the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight. The first annual hearing is to take place before April 1 of each calendar year and is to review the strategic plans and budget for the IRS (including whether the budget supports IRS objectives). The second annual hearing is to be held after the conclusion of the annual tax filing season, and is to review the progress of the IRS in meeting its objectives under the strategic and business plans, the progress of the IRS in improving taxpayer service and compliance, progress of the IRS on technology modernization, and the annual filing season. The bill does not modify the existing jurisdiction of the Committees involved in the joint hearings.

The House bill provides that the Joint Committee is to make annual reports to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable. The

Joint Committee also is to report annually to the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight with respect to the matters that are the subject of the annual joint hearings of members of such Committees.

Effective date.—The House bill provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. The conference agreement provides that there will be one annual joint hearing to review: (1) the progress of the IRS in meeting its objectives under the strategic and business plans; (2) the progress of the IRS in improving taxpayer service and compliance; (3) the progress of the IRS on technology modernization; and (4) the annual filing season. The joint review will be held at the call of the Chairman of the Joint Committee on Taxation, and is to take place before June 1 of each calendar year.

In addition, the conference agreement modifies the House bill provision requiring the Joint Committee on Taxation to report on the overall state of the Federal tax system to provide that such report shall be prepared once in each Congress, but only if amounts necessary to carry out this requirement are specifically appropriated to the Joint Committee on Taxation.

Effective date.—Same as House bill, except that the requirement for an annual joint review, and report by the Joint Committee on Taxation, shall apply only for calendar years 1999–2003.

C. Budget Matters

1. Funding for century date change (sec. 411 of the House bill and sec. 4001 of the Senate amendment)

Present Law

No specific provision.

House Bill

The House bill provides that it is the sense of the Congress that the IRS efforts to resolve the century date change computing problems should be fully funded to provide for certain resolution of such problems.

Effective date.—The House bill provision is effective on the date of enactment.

Senate Amendment

The Senate amendment provides that it is the sense of the Congress that the IRS should place resolving the century date change computing problems as a high priority. The Senate amendment also provides that the Commissioner shall expeditiously submit a report to the Congress on the overall impact of the Senate amendment on the ability of the IRS to resolve the century date change computing problems and on the provisions of the Senate amendment that will require significant amounts of computer programming changes prior to December 31, 1999, in order to carry out the provisions.

Effective date.—The Senate amendment provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with respect to the Sense of the Congress with respect to resolving the century date change conversion problems. The conference agreement does not include the Senate amendment provision requiring the Commissioner to report to the Congress on the impact of the legislation on the ability of the IRS to resolve century date change problems.

Effective date. Same as the House bill and Senate amendment.

2. Financial management advisory group (sec. 412 of the House bill)

Present Law

No provision.

House Bill

The House bill directs the Commissioner to convene a financial management advisory group consisting of individuals with expertise in governmental accounting and auditing from both the private sector and the Government to advise the Commissioner on financial management issues.

Effective date.—The House bill provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision. However, the conferees expect that the Chairman of the Oversight Board will consider establishing a financial management subcommittee to advise the Commissioner on financial management issues.

D. Tax Law Complexity Analysis (sec. 421 and 422 of the House bill, sec. 4002 of the Senate amendment)

Present Law

Present law does not require a formal complexity analysis with respect to changes to the tax laws.

House Bill

Role of the IRS.—The House bill provides that it is the sense of the Congress that the IRS should provide the Congress with an independent view of tax administration and that the tax-writing committees should hear from front-line technical experts at the IRS during the legislative process with respect to the administrability of pending amendments to the Internal Revenue Code.

Complexity analysis.—The House bill requires the staff of the Joint Committee on Taxation to provide a "Tax Complexity Analysis" for legislation reported by the Senate Committee on Finance and the House Committee on Ways and Means and conference reports amending the tax laws. The Tax Complexity Analysis is to identify those provisions in the bill or conference report that, as determined by the staff of the Joint Committee, add significant complexity to the tax laws, or provide significant simplification. The Complexity Analysis is required to include a discussion of the basis for the determination by the staff of the Joint Committee. It is expected that, in general, the Complexity Analysis will be limited to no more than 20 provisions. If the staff of the Joint Committee determines that a bill or conference report does not contain any provisions that add significant complexity or simplification to the tax laws, then the Complexity Analysis is to contain a statement to that effect.

Factors that may be taken into account by the staff of the Joint Committee in preparing the Complexity Analysis include the following: (1) whether the provision is new, modifies or replaces existing law, and whether hearings were held to discuss the proposal and whether the IRS provided input as to its administrability; (2) when the provision becomes effective and corresponding compliance requirements on taxpayers; (3) whether new IRS forms or worksheets are needed, whether existing forms or worksheets must be modified, and whether the effective date allows sufficient time for the IRS to prepare such forms and educate taxpayers; (4) necessity of additional interpretive guidance (e.g., regulations, rulings, notices); (5) the extent

to which the proposal relies on concepts contained in existing law, including definitions; (6) effect on existing record keeping requirements and the activities of taxpayers, complexity of calculations and likely behavioral response, and standard business practices and resource requirements; (7) number, type, and sophistication of affected taxpayers; and (8) whether the proposal requires the IRS to assume responsibilities not directly related to raising revenue which could be handled through another Federal agency.

The House bill requires the Commissioner to provide the Joint Committee with such information as is necessary to prepare each required Tax Complexity Analysis.

A point of order arises with respect to the floor consideration of a bill or conference report that does not contain the required Complexity Analysis. The point of order may be waived by a majority vote.

Effective date.—The requirement of the House bill for a Tax Complexity Analysis is effective with respect to legislation considered on or after January 1, 1998.

Senate Amendment

Role of the IRS.—The IRS is to report to the House Ways and Means Committee and the Senate Finance Committee annually regarding sources of complexity in the administration of the Federal tax laws. Factors the IRS may take into account include: (1) frequently asked questions by taxpayers; (2) common errors made by taxpayers in filling out returns; (3) areas of the law that frequently result in disagreements between taxpayers and the IRS; (4) major areas in which there is no or incomplete published guidance or in which the law is uncertain; (5) areas in which revenue agents make frequent errors in interpreting or applying the law; (6) impact of recent legislation on complexity; (7) information regarding forms, including a listing of IRS forms, the time it takes for taxpayers to complete and review forms, the number of taxpayers who use each form, and how the time required changed as a result of recently enacted legislation; and (8) recommendations for reducing complexity in the administration of the Federal tax system.

Complexity analysis with respect to current legislation.—The Senate amendment requires the Joint Committee on Taxation (in consultation with the IRS and Treasury) to provide an analysis of complexity or administrability concerns raised by tax provisions of widespread applicability to individuals or small businesses. The analysis is to be included in any Committee Report of the House Ways and Means Committee or Senate Finance Committee or Conference Report containing tax provisions, or provided to the Members of the relevant Committee or Committees as soon as practicable after the report is filed. The analysis is to include: (1) an estimate of the number and type of taxpayers affected; and (2) if applicable, the income level of affected individual taxpayers. In addition, such analysis should include, if determinable, the following: (1) the extent to which existing tax forms would require revision and whether a new form or forms would be required; (2) whether and to what extent taxpayers would be required to keep additional records; (3) the estimated cost to taxpayers to comply with the provision; (4) the extent to which enactment of the provision would require the IRS to develop or modify regulatory guidance; (5) whether and to what extent the provision can be expected to lead to disputes between taxpayers and the IRS; and (6) how the IRS can be expected to respond to the provision (including the impact on internal training, whether the Internal Revenue Manual would require revision, whether the change would require re-

programming of computers, and the extent to which the IRS would be required to divert or redirect resources in response to the provision).

Effective date.—The provision of the Senate amendment requiring the Joint Committee on Taxation to provide a complexity analysis is effective with respect to legislation considered on or after January 1, 1999. The provision requiring the IRS to report on sources of complexity is effective on the date of enactment.

Conference Agreement

Role of the IRS.—The conference agreement follows the House bill and the Senate amendment. Under the conference agreement, the Commissioner's report on complexity is to be transmitted to the Congress not later than March 1 of each year.

Complexity analysis.—The conference agreement follows the Senate amendment with a modification to provide that a point of order arises in the House of Representatives with respect to the floor consideration of a bill or conference report if the required complexity analysis has not been completed. The point of order may be waived by a majority vote. The point of order is subject to the Constitutional right of each House of the Congress to establish its own rules and procedures; thus, such point of order may be changed at any time pursuant to the procedures of the House of Representatives.

The conferees intend that the complexity analysis be prepared by the staff of the Joint Committee on Taxation, and that it shall, to the extent feasible, be included in committee or conference committee reports.

Effective date. The provisions of the conference agreement are effective for calendar years after 1998.

TITLE V. ADDITIONAL PROVISIONS

A. Elimination of 18-Month Holding Period for Capital Gains

Present Law

The Taxpayer Relief Act of 1997 Act ("the 1997 Act") provided lower capital gains rates for individuals. Generally, the 1997 Act reduced the maximum rate on the adjusted net capital gain of an individual from 28 percent to 20 percent and provided a 10-percent rate for the adjusted net capital gain otherwise taxed at a 15-percent rate. The "adjusted net capital gain" is the net capital gain determined without regard to certain gain for which the 1997 Act provided a higher maximum rate of tax. The 1997 Act retained the prior-law 28-percent maximum rate for net long-term capital gain attributable to the sale or exchange of collectibles, certain small business stock to the extent the gain is included in income, and property held more than one year but not more than 18 months. In addition, the 1997 Act provided a maximum rate of 25 percent for the long-term capital gain attributable to depreciation from real estate held more than 18 months. Beginning in 2001, lower rates of 8 and 18 percent will apply to the gain from certain property held more than five years.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, property held more than one year (rather than more than 18 months) will be eligible for the 10-, 20-, and 25-percent capital gain rates provided by the 1997 Act.

Effective date.—The conference agreement applies to amounts properly taken into account on or after January 1, 1998.

B. Deductibility of Meals Provided for the Convenience of the Employer

Present Law

In general, subject to several exceptions, only 50 percent of business meals and entertainment expenses are allowed as a deduction (sec. 274(n)). Under one exception, meals that are excludable from employees' incomes as a de minimis fringe benefit (sec. 132) are fully deductible by the employer.

In addition, the courts that have considered the issue have held that if substantially all of the meals are provided for the convenience of the employer pursuant to section 119, the cost of such meals is fully deductible because the employer is treated as operating a de minimis eating facility within the meaning of section 132(e)(2) (*Boyd Gaming Corp. v. Commissioner*¹ and *Gold Coast Hotel & Casino v. I.R.S.*²).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The bill provides that all meals furnished to employees at a place of business for the convenience of the employer are treated as provided for the convenience of the employer under section 119 if more than one-half of employees to whom such meals are furnished on the premises are furnished such meals for the convenience of the employer under section 119. If these conditions are satisfied, the value of all such meals would be excludable from the employee's income and fully deductible to the employer. No inference is intended as to whether such meals are fully deductible under present law.

Effective date.—The provision is effective for taxable years beginning before, on, or after the date of enactment.

C. Normal Trade Relations

Present Law

In the context of U.S. tariff legislation, section 251 of the Trade Expansion Act of 1962 states the principle of "most-favored-nation" (MFN) treatment, requiring tariff treatment to be applied to all countries equally. Specifically, the products of a country given MFN treatment are subject to rates of duty found in column 1 of the Harmonized Tariff Schedule (HTS) of the United States. Products from countries not eligible for MFN treatment under U.S. law are subject to higher rates of duty (found in column 2 of the HTS). Under current U.S. law, only six countries are subject to column 2 treatment: Afghanistan, Cuba, Laos, North Korea, Serbia and Montenegro, and Vietnam. The remaining U.S. trading partners are subject to either conditional or unconditional MFN treatment, or to even more preferential rates than MFN under free trade agreements (Israel, Canada, and Mexico) and under unilateral grants of tariff preference (the Generalized System of Preferences, the Caribbean Basin Initiative, and the Andean Trade Preferences Act).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision would change the terminology used in U.S. trade statutes from "most-favored-nation" (MFN) to "normal trade relations" (NTR) in order to reflect more accurately the nature of the trade relationship in

question. The legislation would not change the tariff treatment received by any country.

The Committee has long been concerned that the term "most-favored-nation" is a misnomer and does not accurately reflect the nature of the trading relationship in question. The terminology implies that a country receiving MFN is somehow receiving treatment that is special or better than what a country would normally receive. In reality, however, a country receiving MFN receives nothing more than ordinary or normal treatment. Only six countries receive treatment that is less favorable than this normal treatment. In addition, three countries actually receive tariff treatment that is better than MFN because they participate in a free trade agreement with the United States and numerous others receive treatment more favorable than MFN under unilateral grants of trade preference signifying that the "most" favored terminology is misleading.

The Committee believes that the MFN terminology has led to confusion and a misunderstanding of Congressional and Presidential action concerning the trade statutes. Accordingly, the Subcommittee strongly believes that the terminology should be changed to reflect the true nature of the trading relationship: merely normal relations.

The Committee does not intend that the change in terminology from MFN to NTR have any affect whatsoever on the meaning of any existing U.S. law or practice. It would not change any procedures under existing law for granting or removing MFN status. Rather, the new term is to have the same meaning as MFN as is currently defined in domestic legislation and international agreements and would not change the tariff treatment granted by the United States to any of its trading partners.

TITLE VI. TAX TECHNICAL CORRECTIONS

House Bill

The House bill contains technical, clerical and conforming amendments to the Taxpayer Relief Act of 1997 (the "1997 Act") and other recently enacted legislation. The provisions generally are effective as if enacted in the original legislation to which each provision relates.¹

Senate Amendment

The Senate amendment is the same as the House bill, with the following modifications, additions, and deletion:

1. Child Tax Credit Provisions of the 1997 Act

Treatment of a portion of the child credit as a supplemental child credit.—The Senate amendment modifies the provision of the House bill intended to clarify the treatment of a portion of the child credit as a supplemental child credit under the earned income credit and an offsetting reduction of the child credit. Specifically, the Senate amendment clarifies the computation of the amount of the child credit that is treated as a supplemental child credit. Both the House bill and the Senate amendment clarify that such treatment does not affect the total tax credits allowed to the taxpayer or any other tax credit available to the taxpayer.

2. Education Incentives of the 1997 Act

Education IRAs.—The Senate amendment adds provisions to: (1) provide that the excise tax of section 4973 applies to each year that an excess contribution remains in an education IRA; (2) clarify that a beneficiary of

an education IRA must be a life-in-being; (3) clarify that the 10-percent excise tax provided under section 530(d)(4) will not be imposed in cases where a distribution from an education IRA is includable in gross income solely because the taxpayer elects the HOPE or Lifetime Learning credit with respect to the beneficiary; (4) clarify that, in the event of the death of the designated beneficiary, the balance remaining in an education IRA may be distributed to any other beneficiary or to the estate of the deceased designated beneficiary, and a tax-free rollover of the account will be allowed if any member of the family becomes the new beneficiary; and (5) provide that if expenses are taken into account in determining the amount of the exclusion under section 530 for a distribution from an education IRA, then no deduction, exclusion, or credit is allowed under the Code with respect to such expenses.

Student loan interest.—The Senate amendment adds a provision to clarify that only a taxpayer who is required to make interest payments under the terms of the loan may deduct such payments as student loan interest.

Enhanced deduction for corporate donations of computers.—The Senate amendment adds a provision to clarify the requirements applicable to entities and organizations to which computers may be donated for purposes of the enhanced deduction.

Qualified State tuition programs.—The Senate amendment adds a provision that includes the original beneficiary's spouse within the definition of "member of the family."

Qualified zone academy bonds.—The Senate amendment adds a provision that clarifies the treatment of the credit for purposes of the estimated tax and overpayment rules.

3. Savings Incentives of the 1997 Act

Conversion of IRAs into Roth IRAs.—Under the Senate amendment, in the case of conversions of IRAs into Roth IRAs, the taxpayer is able to elect to have the amount converted includable in income in the year of the conversion (or the year of withdrawal if the conversion is accomplished through a rollover) rather than ratably over 4 years. The Senate amendment does not include the additional 10-percent recapture tax applicable to premature withdrawals of amounts to which the 4-year spread applies. Instead, under the Senate amendment, if an individual elects application of the 4-year spread and withdraws amounts before the entire amount of the conversion has been included in income, the amount withdrawn is includable in income (in addition to any amount required to be included under the 4-year spread). In no case will the amount includable under this provision exceed the amount converted. The Senate amendment does not include the rules in the House bill regarding separate accounts for converted amounts and instead includes ordering rules for determining the character of withdrawals from Roth IRAs.

Under the Senate amendment, a new 5-year holding period for determining whether distributions from a Roth IRA are qualified distributions does not apply to converted amounts. Thus, the 5-year holding period begins with the year for which a contribution (including a rollover contribution) was made.

The Senate amendment also clarifies calculation of adjusted gross income for purposes of applying the \$100,000 adjusted gross income ("AGI") limit on individuals eligible to convert IRAs to Roth IRAs. Under the Senate amendment, the applicable AGI is AGI for the year of the distribution to which the conversion relates. In addition, under the Senate amendment, it is intended that in determining AGI, the conversion amount (to

¹For a description of the House provisions, see H. Rept. 105-356 (H.R. 2645), October 29, 1997. The provisions of H.R. 2645, as reported by the House Committee on Ways and Means, were included as an amendment (Title VI) to H.R. 2676, as passed by the House on November 5, 1997.

¹106 T.C. No. 19 (May 23, 1996).

²U.S. D.C. Nev. CV-5-94-1146-HDM(LRL) (September 26, 1996).

the extent otherwise includible in AGI) is subtracted from AGI for the year of the distribution.

Penalty-free distributions for education expenses and purchase of first homes.—The Senate amendment modifies the provision in the House bill intended to prevent avoidance of the 10-percent early withdrawal tax by providing that hardship distributions from qualified cash or deferred arrangements and tax-sheltered annuities are not eligible rollover distributions (and not subject to 20-percent withholding). The Senate amendment also modifies the effective date of the House bill provision. The Senate amendment is effective for distributions after December 31, 1998.

4. Capital Gains Provisions of the 1997 Act

The Senate amendment modifies two provisions of the House bill to: (1) clarify the provision relating to the holding period of positions in certain short sales and straddles; and (2) provide that new section 1045 (relating to rollovers of small business stock) applies to stock held by certain partnerships with trusts as partners. The Senate amendment adds a provision to clarify the amount of exclusion applicable to the sale of a principal residence by a married couple filing a joint return who do not qualify for the full \$500,000 exclusion.

5. Alternative Minimum Tax Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) conform the regular-tax election to use AMT depreciation to the changes made to AMT depreciation by the 1997 Act; and (2) clarify the eligibility of the small corporation exemption.

6. Estate and Gift Tax Provisions of the 1997 Act

The Senate amendment modifies the provisions of the House bill to: (1) clarify the effective date for the generation-skipping exemption; (2) coordinate the unified credit and the qualified family-owned business exclusion; and (3) clarify the rules governing revaluation of gifts. The Senate amendment also adds provisions that: (1) clarify the phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates; (2) clarify that interests eligible for the family-owned business exclusion must be passed to a qualified heir; (3) clarify the "trade or business" requirement for the family-owned business exclusion; (4) convert the family-owned business exclusion into a deduction; (5) make other technical changes to items cross-referenced in the family-owned business provision; and (6) clarify the treatment of post-mortem conservation contributions.

7. D.C. Zone Incentives of the 1997 Act

The Senate amendment adds provisions that clarify the definitions of businesses and property eligible for special incentives available with respect to the D.C. Zone. In addition, the Senate amendment provides that the income phase-out rules applicable to the D.C. first-time homebuyer credit apply only in the year the credit is generated and not in subsequent carryover years.

8. Miscellaneous Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify the qualification of the reduced rate of tax on hard ciders; (2) clarify the treatment of the tax paid by electing publicly treated partnerships; (3) modify the depreciation limitation of electric vehicles; and (4) modify the definition of "non-Amtrak State" for purposes of the Amtrak net operating loss provision.

9. Revenue-Increase Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify that the exception to the

constructive sales rules for positions with respect to straight debt instruments does not apply to positions that are convertible into stock; (2) provide coordination between the basis adjustment rules relating to extraordinary dividends and similar rules applicable to consolidated returns; (3) clarify the interaction of section 355 and rules relating to certain divisive transactions involving asset contributions to a subsidiary; (4) clarify the application of section 304 to certain international transactions; (5) clarify the treatment of prepaid telephone cards for telephone excise tax purposes; (6) modify the unrelated business income tax rules applicable to second-tier subsidiaries; (7) modify the interaction between section 901(k) and the foreign tax credit flow-through rules for RICs; (8) clarify the treatment of additional covered lives under a master contract for purposes of the effective date of the provision relating to company owned life insurance; (9) make a clerical amendment to the definition of wages under the earned income credit; and (10) clarify the allocation of basis of properties distributed by a partnership.

10. Foreign Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify the treatment of PFIC option holders; (2) clarify the application of PFIC mark-to-market rules to RICs; and (3) clarify the interaction between the PFIC and other mark-to-market regimes.

11. Simplification Provisions of the 1997 Act

The Senate amendment adds a provision that provides that distributions from a REIT are deemed to first come from any non-REIT earnings.

12. Estate, Gift, and Trust Simplification Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify the treatment of revocable trusts for purposes of the generation-skipping transfer tax; and (2) provide regulatory authority for simplified reporting of funeral trusts terminated during the taxable year.

13. Excise Tax Simplification Provisions of the 1997 Act

The Senate amendment clarifies that the 1997 Act's provision liberalizing rules for bulk importation of wine applies only to alcohol that would qualify as a natural wine if produced in the United States.

14. Pension and Employee Benefits Provisions of the 1997 Act

The Senate amendment adds a clarification to the scope of the provision relating to the treatment of disability payments made to public safety employees.

15. Technical Corrections Relating to Other Legislation

Adoption credit.—The Senate amendment adds a provision that provides that the phase out rules applicable to the adoption credit are not applicable to credit carryovers.

Disclosure requirements of apostolic organizations.—The Senate amendment adds a provision that provides that section 501(d) apostolic organizations are not required to disclose Schedules K-1.

Earned income credit qualification.—The Senate amendment adds provisions that clarify the application of the taxpayer identification number rules for purposes of determining eligibility for the earned income credit.

Stapled REIT grandfather rule.—The Senate amendment does not include the provision of the House bill relating to the grandfather rule applicable to stapled REITs.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications, additions, and deletions.

1. Education Incentives of the 1997 Act

Education IRAs.—The conference agreement clarifies that for purposes of the special rules regarding tax-free rollovers and changes of designated beneficiaries, the new beneficiary must be under the age of 30.

Deduction for student loan interest.—The conference agreement clarifies that a "qualified education loan" means any indebtedness incurred solely to pay qualified higher education expenses. Thus, revolving lines of credit generally would not constitute qualified education loans unless the borrower agreed to use the line of credit to pay only qualifying education expenses. The conference agreement further provides Treasury with authority to issue regulations regarding the calculation of the 60-month period in the case of consolidated loans, collapsed loans, and loans made before the date of enactment of the Taxpayer Relief Act of 1997 (August 5, 1997) for purposes of determining the deductibility of interest paid on such loans. In this regard, the conferees expect that such regulations would mirror the guidance contained in Notice 98-7 issued regarding the establishment of the 60-month period with respect to such loans for reporting purposes. The provision is effective for interest payments due and paid after December 31, 1997, on any qualified education loan.

2. Savings and Investment Incentives of the 1997 Act

Conversion of IRAs into Roth IRAs.—The conferees wish to clarify that for purposes of determining the \$100,000 adjusted gross income ("AGI") limit on IRA conversions to Roth IRAs, the conversion amount is not taken into account. Thus, for this purpose, AGI (and all AGI-based phaseouts) are to be determined without taking into account the conversion amount. For purposes of computing taxable income, the conversion amount (to the extent otherwise includible in AGI) is to be taken into account in computing the AGI-based phaseout amounts. The conferees wish to clarify that the language of the Senate Finance committee report (appearing in connection with section 6005(b) of the Senate amendment) relating to calculation of AGI limit for conversions is superceded.

Small business stock rollover.—The conference agreement provides that rules similar to the rules contained in subsections (f) through (k) of section 1202 will apply for purposes of the rollover provision (sec. 1045). Under these rules, for example, the benefit of a tax-free rollover with respect to the sale of small business stock by a partnership will flow through to a partner who is not a corporation if the partner held its partnership interest at all times the partnership held the small business stock. A similar rule applies to S corporations. The conference agreement does not contain any provision limiting the types of partners or shareholders that a partnership or S corporation may have in order for the benefits of section 1045 to apply to a noncorporate partner or shareholder.

3. Estate and Gift Tax Provisions of the 1997 Act

Phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates.—The conference agreement does not include the provision in the Senate amendment clarifying the phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates.

Qualification for an estate tax deduction for qualified family-owned business interest in the case of cash leases by decedent to family member.—The conference agreement clarifies that an interest in property will not be disqualified, in whole or in part, as an interest in a family-owned business where the decedent leases that interest on a net cash basis

to a member of the decedent's family who uses the leased property in an active business. The rental income derived by the decedent from the net cash lease in those circumstances is not treated as personal holding company income for purposes of Code section 2057.

4. Miscellaneous Provisions of the 1997 Act

Fuel excise tax provisions.—The conference agreement does not include the provisions in the Senate amendment relating to fuel excise taxes that were enacted in the Transportation Equity Act for the 21st Century.

5. Revenue Increase Provisions of the 1997 Act

Coordination between basis adjustment rules relating to extraordinary dividends and similar rules applicable to consolidated returns.—With respect to the Senate amendment regarding gain recognition for certain extraordinary dividends, the conference agreement clarifies that Congress intends that, except as provided in regulations to be issued, section 1059 does not cause current gain recognition to the extent that the consolidated return regulations require the creation or increase of an excess loss account with respect to a distribution. Thus, current Treas. Reg. sec. 1.1059(e)-1(a) does not result in gain recognition with respect to distributions within a consolidated group to the extent such distribution results in the creation or increase of an excess loss account under the consolidated return regulations.

Holding period requirement for claiming foreign tax credits with respect to dividends.—The 1997 Act added section 901(k), which denies a shareholder foreign tax credits normally available with respect to a dividend if the shareholder has not held the stock for a minimum period during which it is not protected from risk of loss. Section 901(k)(4), "Exception for certain taxes paid by securities dealers," provides an exception for foreign tax credits with respect to certain dividends received on stock held in the active conduct of a securities business in a foreign country. The Ways and Means and Finance committee reports provide that the exception is available only for dividends received on "stock which the shareholder holds in its capacity as a dealer in securities." H. Rept. 105-148, 105th Cong., 1st Sess. 546 (1997); S. Rept. 105-33, 105th Cong., 1st Sess 176 (1997). The conference agreement clarifies that the exception of section 901(k)(4) is available only for dividends received on stock that the shareholder holds in its capacity as a dealer in securities.

Extension of diesel fuel excise taxes to kerosene.—The conference agreement includes clarifications of the rules under which aviation grade kerosene may be removed for use as aviation fuel without payment of the highway excise taxes.

6. Individual and Business Simplification Provisions of the 1997 Act

Magnetic media returns for partnerships having more than 100 partners.—Present law, as amended by the 1997 Act, provides that the Treasury Secretary is to require partnerships with more than 100 partners to file returns on magnetic media (sec. 6011(e)). Present law also imposes a penalty in the case of failure to meet magnetic media requirements. The conference agreement clarifies that the penalty under section 6724(c) for failure to comply with the requirement of filing returns on magnetic media applies to the extent such a failure occurs with respect to more than 100 information returns, in the case of a partnership with more than 100 partners.

7. Foreign Tax Provisions of the 1997 Act

Information reporting with respect to certain foreign corporations and partnerships.—Present law, as amended by the 1997 Act, provides that reporting rules apply to controlled foreign corporations and foreign partnerships (sec. 6038). The conference agreement clarifies that guidance relating to the furnishing of required information is to be provided by the Secretary of the Treasury (not specifically through regulations), and conforms the use of the defined term, foreign business entity.

8. Excise Tax and Other Simplification Provisions of the 1997 Act

Refunds when wine returned to wineries or beer returned to breweries.—The 1997 Act added a provision that tax is refunded when tax-paid wine is returned to a winery or tax-paid beer is returned to a brewery (secs. 5044 and 5056). The Code provisions allowing these refunds speak of beverages produced in the United States. A separate provision of the 1997 Act provided that beer and wine imported "in bulk" would be taxed under the rules for domestically produced beverages. The conference agreement provides that the refund provisions are coordinated with the provision on tax treatment of bulk imports.

Transfers of bulk imports of wine to wineries or beer to breweries.—Prior to the 1997 Act, imported beer and wine always were taxed upon importation (secs. 5043 and 5054). The 1997 Act added provisions for non-tax-paid transfers of bulk imports to breweries and wineries (secs. 5364 and 5418). The conference agreement conforms the provisions imposing tax in all cases on importation to recognize these allowed transfers. Under the conference agreement, liability for tax payment shifts to the brewery or winery when bulk imports are transferred with payment of tax, just as those parties are liable for payment of tax on domestically produced beer and wine.

9. Taxpayer Bill of Rights 2 (1996)

Disclosure of returns and return information.—The rules regarding disclosure of returns and return information were amended in 1996 to permit certain disclosures in two additional circumstances. Present law provides that, in the case of a deficiency with respect to a joint return of individuals who are no longer married or no longer residing in the same household, the Treasury Secretary is permitted to disclose to one such individual whether there has been an attempt to collect the deficiency from the other individual, the general nature of such collection activities, and the amount collected (sec. 6103(e)(8)). Present law also provides that if the Treasury Secretary determines that a person is liable for a penalty for failure to collect and pay over tax, the Secretary is permitted to disclose to that person the name of any other person liable for that penalty, and whether there has been an attempt to collect the deficiency from the other individual, the general nature of such collection activities, and the amount collected (sec. 6103(e)(9)). The conference agreement clarifies that these disclosures, like certain other disclosures permitted under present law, may be made under section 6103(e)(6) to the duly authorized attorney in fact of the person making the disclosure request. The provision takes effect on date of enactment.

10. Transportation Equity Act for the 21st Century ("TEA 21") (1998)

Simplified refund provisions for tax on gasoline, diesel fuel and kerosene.—TEA 21 included a provision combining the Code re-

fund provisions for gasoline, diesel fuel, and kerosene and reducing the minimum claim amount. Under TEA 21, claims may be filed once a \$750 threshold is reached for gasoline, diesel fuel, and kerosene combined, and overpayments attributable to multiple calendar quarters may be aggregated in determining whether this threshold is met (rather than claims being filed only with respect to a single calendar quarter). The conference agreement adds a provision conforming a current Code timing provision to reflect the portion of the TEA 21 provision that allows aggregation of multiple calendar quarters into a single refund claim.

TITLE VII. REVENUE OFFSETS

A. Employer Deductions for Vacation and Severance Pay (sec. 501 of the House Bill and sec. 5001 of the Senate Amendment)

Present Law

For deduction purposes, any method or arrangement that has the effect of a plan deferring the receipt of compensation or other benefits for employees is treated as a deferred compensation plan (sec 404(b)). In general, contributions under a deferred compensation plan (other than certain pension, profit-sharing and similar plans) are deductible in the taxable year in which an amount attributable to the contribution is includible in income of the employee. However, vacation pay which is treated as deferred compensation is deductible for the taxable year of the employer in which the vacation pay is paid to the employee (sec. 404(a)(5)).

Temporary Treasury regulations provide that a plan, method, or arrangement defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. A plan, method or arrangement is presumed to defer the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered (the "2½ month" period). A plan, method or arrangement is not considered to defer the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. (Temp. Treas. Reg. Sec. 1.404(b)-1T A-2).

The Tax Court recently addressed the issue of when vacation pay and severance pay are considered deferred compensation in *Schmidt Baking Co., Inc.*, 107 T.C. 271 (1996). In *Schmidt Baking*, the taxpayer was an accrual basis taxpayer with a fiscal year that ended December 28, 1991. The taxpayer funded its accrued vacation and severance pay liabilities for 1991 by purchasing an irrevocable letter of credit on March 13, 1992. The parties stipulated that the letter of credit represented a transfer of substantially vested interest in property to employees for purposes of section 83, and that the fair market value of such interest was includible in the employees' gross incomes for 1992 as a result of the transfer.¹ The Tax Court held that the purchase of the letter of credit, and the resulting income inclusion, constituted payment

¹While the rules of section 83 may govern the income inclusion, section 404 governs the deduction if the amount involved is deferred compensation.

of the vacation and severance pay within the 2½ month period. Thus, the vacation and severance pay were treated as received by the employees within the 2½ month period and were not treated as deferred compensation. The vacation pay and severance pay were deductible by the taxpayer for its 1991 fiscal year pursuant to its normal accrual method of accounting.

House Bill

The House bill provides that, for purposes of determining whether an item of compensation (other than severance pay), is deferred compensation (under Code sec. 404), the compensation is not considered to be paid or received until actually received by the employee. In addition, an item of deferred compensation is not considered paid to an employee until actually received by the employee. The House bill is intended to overrule the result in *Schmidt Baking*. For example, with respect to the determination of whether vacation pay is deferred compensation, the fact that the value of the vacation pay is includible in the income of employees within the applicable 2½ month period is not relevant. Rather, the vacation pay must have been actually received by employees within the 2½ month period in order for the compensation not to be treated as deferred compensation.

It is intended that similar arrangements, in addition to the letter of credit approach used in *Schmidt Baking*, do not constitute actual receipt by the employee, even if there is an income inclusion. Thus, for example, actual receipt does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, actual receipt does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, actual receipt does not include an amount transferred as a loan, refundable deposit, or contingent payment. Amounts set aside in a trust for employees generally are not considered to be actually received by the employee.

Under the House bill, sick pay that is deferred compensation is treated the same as vacation pay that is deferred compensation, and is not deductible until paid to employees. The bill does not change the rule under which deferred compensation (other than vacation pay and sick pay and deferred compensation under qualified plans) is deductible in the year includible in the gross income of employees participating in the plan if separate accounts are maintained for each employee.

While *Schmidt Baking* involved only vacation pay and severance pay, there is concern that this type of arrangement may be tried to circumvent other provisions of the Code where payment is required in order for a deduction to occur. Thus, it is intended that the Secretary will prevent the use of similar arrangements. No inference is intended that the result in *Schmidt Baking* is present law beyond its immediate facts or that the use of similar arrangements is permitted under present law.

Effective date.—The provision is effective for taxable years ending after October 8, 1997. Any change in method of accounting required by the provision will be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change will be taken into account in the year of the change.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision also applies to severance pay as well as other types of compensation.

Effective date.—The provision is effective for taxable years ending after the date of enactment. With respect to the change in method of accounting, the Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment. As under the Senate amendment, the fact that an item of compensation is includible in employees' incomes or wages within the applicable 2½ month period is not relevant to determining whether an item of compensation is deferred compensation.

As under the Senate amendment, many arrangements in addition to the letter of credit approach used in *Schmidt Baking* do not constitute actual receipt by employees. For example, actual receipt does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, actual receipt does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, actual receipt does not include an amount transferred as a loan, refundable deposit, or contingent payment. Further, amounts set aside in a trust for employees are not considered to be actually received by the employee.

In light of the change being made and its effect on all cases involving this issue, the conferees ask the Secretary to consider whether, on a case-by-case basis, continued challenge of these arrangements for prior years represents the best use of litigation resources.

Effective date.—The provision is effective for taxable years ending after the date of enactment. Any change in method of accounting required by the provision will be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change will be taken into account over a three-year period beginning with the first year for which the provision is effective.

B. Modify Foreign Tax Credit Carryover Rules (sec. 5002 of the Senate amendment)

Present Law

U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate foreign tax credit limitations are applied to specific categories of income.

The amount of creditable taxes paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back two years and forward five years. The amount carried over may be used as a credit in a carryover year to the extent the taxpayer otherwise has excess foreign tax credit limitation for such year. The separate foreign tax credit limitations apply for purposes of the carryover rules.

House Bill

No provision.

Senate Amendment

The Senate amendment reduces the carryback period for excess foreign tax credits from two years to one year. The Senate amendment also extends the excess foreign tax credit carryforward period from five years to seven years.

Effective date.—The provision applies to foreign tax credits arising in taxable years beginning after December 31, 1998.

Conference Agreement

The conference agreement does not include the Senate amendment.

C. Clarify and Expand Mathematical Error Procedures (sec. 5003 of the Senate amendment)

Present Law

Taxpayer identification numbers ("TINs")

The IRS may deny a personal exemption for a taxpayer, the taxpayer's spouse or the taxpayer's dependents if the taxpayer fails to provide a correct TIN for each person for whom the taxpayer claims an exemption. This TIN requirement also indirectly effects other tax benefits currently conditioned on a taxpayer being able to claim a personal exemption for a dependent (e.g., head-of-household filing status and the dependent care credit). Other tax benefits, including the adoption credit, the child tax credit, the Hope Scholarship credit and Lifetime Learning credit, and the earned income credit also have TIN requirements. For most individuals, their TIN is their Social Security Number ("SSN"). The mathematical and clerical error procedure currently applies to the omission of a correct TIN for purposes of personal exemptions and all of the credits listed above except for the adoption credit.

Mathematical or clerical errors

The IRS may summarily assess additional tax due as a result of a mathematical or clerical error without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. Where the IRS uses the summary assessment procedure for mathematical or clerical errors, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the IRS abate its assessment. The IRS may not proceed to collect the amount of the assessment until the taxpayer has agreed to it or has allowed the 60-day period for objecting to expire. If the taxpayer files a request for abatement of the assessment specified in the notice, the IRS must abate the assessment. Any reassessment of the abated amount is subject to the ordinary deficiency procedures. The request for abatement of the assessment is the only procedure a taxpayer may use prior to paying the assessed amount in order to contest an assessment arising out of a mathematical or clerical error. Once the assessment is satisfied, however, the taxpayer may file a claim for refund if he or she believes the assessment was made in error.

House Bill

No provision.

Senate Amendment

The Senate amendment provides in the application of the mathematical and clerical error procedure that a correct TIN is a TIN that was assigned by the Social Security Administration (or in certain limited cases, the IRS) to the individual identified on the return. For this purpose the IRS is authorized to determine that the individual identified on the tax return corresponds in every aspect (including, name, age, date of birth, and SSN) to the individual to whom the TIN is issued. The IRS also is authorized to use the mathematical and clerical error procedure to deny eligibility for the dependent care tax credit, the child tax credit, and the earned income credit even though a correct TIN has been supplied if the IRS determines that the statutory age restrictions for eligibility for any of the respective credits is not satisfied (e.g., the TIN issued for the child claimed as the basis of the child tax credit identifies the child as over the age of 17 at the end of the taxable year).

Effective date.—The provision is effective for taxable years ending after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

D. Freeze Grandfather Status of Stapled REITs (sec. 5004 of the Senate amendment)

Present Law

A real estate investment trust ("REIT") is an entity that receives most of its income from passive real estate related investments

and that essentially receives pass-through treatment for income that is distributed to shareholders. If an electing entity meets the qualifications for REIT status, the portion of its income that is distributed to the investors each year generally is taxed to the investors without being subjected to a tax at the REIT level. In general, a REIT must derive its income from passive sources and not engage in any active trade or business.

A REIT must satisfy a number of tests on a year-by-year basis that relate to the entity's: (1) organizational structure; (2) source of income; (3) nature of assets; and (4) distribution of income. Under the source-of-income tests, at least 95 percent of its gross income generally must be derived from rents, dividends, interest and certain other passive sources (the "95-percent test"). In addition, at least 75 percent of its income generally must be from real estate sources, including rents from real property and interest on mortgages secured by real property (the "75-percent test").

A REIT is permitted to have a wholly-owned subsidiary subject to certain restrictions (a "qualified REIT subsidiary"). All of the assets, liabilities, income, deductions and credits of a qualified REIT subsidiary are treated as attributes of the REIT.

In a stapled REIT structure, both the shares of a REIT and a C corporation may be traded, but are subject to a provision that they may not be sold separately. In the Deficit Reduction Act of 1984 (the "1984 Act"), Congress required that, in applying the tests for REIT status, all stapled entities are treated as one entity (sec. 269B(a)(3)). The 1984 Act included grandfather rules, one of which provided that certain then-existing stapled REITs were not subject to the new provision (sec. 136(c)(3) of the 1984 Act). That grandfather rule provided that the new provision did not apply to a REIT that was a part of a group of stapled entities if the group of entities was stapled on June 30, 1983, and included a REIT on that date.

House Bill

No provision.

Senate Amendment

The Senate amendment treats activities and gross income of a stapled REIT group with respect to real property interests acquired after March 26, 1998, by any member of a stapled REIT group (and not grandfathered under the rules described below) as activities and income of the REIT for certain purposes, including the 75-percent and 95-percent tests for REIT qualification. The stapled REIT group includes the existing stapled REIT, a stapled entity, or a subsidiary or partnership in which a 10-percent-or-greater interest is owned by an existing stapled REIT or stapled entity.

Under the Senate amendment, there is an exception to this treatment for certain grandfathered real property interests. Grandfathered interests include interests that had been acquired by a member of the REIT group on or before March 26, 1998. In addition, grandfathered real property interests include interests acquired by a member of the REIT group after March 26, 1998, pursuant to a binding written agreement in effect on March 26, 1998, or which were described in a public announcement or in a filing with the Securities and Exchange Commission ("SEC") on or before March 26, 1998.

In general, a grandfathered real property interest does not lose its grandfathered status by reason of a repair to, an improvement of, or a lease of, a grandfathered property. Thus, if a REIT owns a grandfathered real property interest that it leases to a stapled entity, the interest remains a grandfathered interest. Similarly, a renewal of the lease to the stapled entity would not cause the real

property interest to lose its grandfather status, whether the renewal is pursuant to the terms of the lease or otherwise. However, an improvement of a grandfathered real property interest causes loss of grandfathered status and become a nonqualified real property interest in certain circumstances. Any expansion beyond the boundaries of the land of the otherwise grandfathered interest occurring after March 26, 1998, is treated as a non-qualified real property interest to the extent of such expansion. Moreover, any improvement of an otherwise grandfathered real property interest (within its land boundaries) that is placed in service after December 31, 1999, is treated as a separate non-qualified real property interest in certain circumstances. There is an exception for improvements placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

If a REIT or stapled entity owns, directly or indirectly, a 10-percent-or-greater interest in a corporate subsidiary or partnership (or other entity described below) that owns a real property interest, the above rules apply with respect to a proportionate part of the entity's real property interest, activities and gross income. Similar rules attributing the proportionate part of the subsidiary's or partnership's real property interests and gross income apply when a REIT or stapled entity acquires a 10-percent-or-greater interest (or in the case of a previously-owned entity, acquires an additional interest) after March 26, 1998, with exceptions for interests acquired pursuant to binding written agreements, public announcements, or SEC filings described above.

Special rules apply where a member of the stapled REIT group holds a mortgage (that is not an existing obligation under the rules described below) that is secured by an interest in real property, where either the REIT or a stapled entity engages in certain activities with respect to that property. In such cases, all interest on the mortgage and all gross income received by a member of the REIT group from the activity is treated as income of the REIT that is not qualifying income under the 75-percent or 95-percent tests, with the result that REIT status might be lost. An exception to these rules is provided for certain mortgages the interest on which does not exceed an arm's-length rate and which would be treated as interest for purposes of the REIT rules. An exception is also available for certain mortgages that are held on March 26, 1998. The exception for existing mortgages ceases to apply if the mortgage is refinanced and the principal amount is increased in such refinancing.

For a corporate subsidiary owned by a stapled entity, the 10-percent ownership test is met if a stapled entity owns, directly or indirectly, 10 percent or more of the corporation's stock, by either vote or value. For interests in partnerships, the ownership test is met if either the REIT or a stapled entity owns, directly or indirectly, a 10-percent or greater interest in the partnership's assets or net profits.

Effective date.—The Senate amendment is effective for taxable years ending after March 26, 1998.

Conference Agreement

The conference agreement generally follows the Senate amendment with the following technical modifications. The conference agreement clarifies that a real property interest acquired pursuant to the exercise of a put option, buy-sell agreement or an agreement relating to a third party default that was binding on March 26, 1998, and at all times thereafter, is generally treated as a grandfathered real property interest. It is

the intention of the conferees that this rule apply only to substantive economic arrangements that are outside of the control of the stapled REIT group. The conference agreement clarifies that a renewal of a lease of property from a third party to a member of the stapled REIT group, like a lease or renewal between group members, does not generally terminate grandfather status, whether the renewal is pursuant to the terms of the lease or otherwise.² However, renewal of a lease can cause loss of grandfather status if the property is improved to the extent that grandfather status would be lost under the improvement rules described above. Moreover, the conference agreement provides that, for leases and renewals entered into after March 26, 1998 (whether from members of the stapled REIT group or third parties), grandfather status is lost if the rent on the lease or renewal exceeds an arm's length rate.

The conference agreement makes certain changes to the rule attributing ownership of real property interests, mortgages and other items from a partnership or subsidiary in which the REIT or a stapled entity owns a 10-percent-or-greater interest, directly or indirectly. Under the conference agreement, the percentage ownership interest in a partnership is to be determined by the owner's share of capital or profits, whichever is larger. The conference agreement clarifies that an interest in real property acquired by a 10-percent-or-greater partnership or subsidiary pursuant to a binding written agreement, public announcement, SEC filing, put option, buy-sell agreement or agreement relating to a third-party default (a "qualified transaction") is treated as grandfathered if such interest would be a grandfathered interest if acquired directly by the REIT or stapled entity. The conference agreement also provides that the exception for 10-percent-or-greater interests in partnerships or subsidiaries acquired pursuant to a qualified transaction applies to interests acquired by any member of the stapled REIT group. The conferees also wish to clarify that all real property interests, mortgages, activities and gross income of a qualified REIT subsidiary are treated as attributes of the REIT for purposes of the provision.

The conference agreement adds a rule that provides that a transfer, direct or indirect, of a grandfathered real property interest between members of a stapled REIT group does not result in a loss of grandfather status if the total direct and indirect interests of both the exempt REIT and stapled entity in the real property interest does not increase as a result of the transfer. If the total direct and indirect interest of the exempt REIT and stapled entity increases, the transferred real property interest will be deemed to lose grandfather status only to the extent of such increase. The provision applies to all types of transfers of real property interests among group members, such as sales, contributions and distributions, whether taxable or tax-free. Moreover, the provision applies both to direct transfers of real property interests and transfers of such interests indirectly through transfer of interests in 10-percent-or-greater owned partnerships and subsidiaries. The application of the new provision is illustrated by the following examples. First, assume that an exempt REIT sells a portion of a grandfathered real property interest to a stapled entity. The real property interest remains grandfathered because there is no increase in the total interests of the REIT and the stapled entity (100 percent both before and after the transfer). Second, assume that

²In the case of a lease from a third party, a renewal will not qualify if there is a significant time period between the two tenancies.

a grandfathered real property interest is contributed by a stapled entity to a partnership or subsidiary in which the stapled entity owns a 10-percent-or-greater interest (either prior to, or as a result of, the contribution). The real property interest remains grandfathered because the previous total interests of the exempt REIT and stapled entity (the stapled entity's 100-percent interest) are not increased by the transfer.³ Third, assume a REIT owns a 50-percent interest in a partnership that distributes a grandfathered real property interest to the REIT in complete liquidation of its interest. The 50-percent interest that was previously deemed owned by the REIT will continue to be grandfathered; the remaining 50-percent interest will become a non-grandfathered interest because it represents an increase in the total direct and indirect interests of the REIT and stapled entity in the real property interest. Fourth, assume that a partnership in which an exempt REIT or stapled entity owns a 10-percent or greater interest terminates as a result of a sale of 50 percent or more of the total partnership interests during a 12-month period that does not involve the REIT or a stapled entity (sec. 708(b)(1)(B)). Grandfather status of real property interests owned by the partnership is not lost in the transfer because, as a result of the termination, the partnership's assets are deemed contributed to a new partnership and interests in that partnership are deemed distributed to the purchasing and other partners in proportion to their interests (Treas. reg. sec. 1.708-1(b)(1)(iv)). Thus, there is no change in the total interest of the REIT and stapled entity in the partnership's assets.

The conference agreement adds a provision intended to deal with the special situation of so-called "UPREIT" partnerships (see Treas. reg. 1.701-2(d)(example 4)), which generally treats 100 percent of the real property interests, mortgages, activities and gross income of such partnerships as interests, activities and gross income of the REIT or stapled entity that owns a partnership interest. The provision applies where (i) an exempt REIT or stapled entity owned directly or indirectly at least a 60-percent interest in a partnership as of March 26, 1998, (ii) 90 percent or more of the interests in the partnership (other than those held by the exempt REIT or stapled entity) are or will be redeemable or exchangeable for consideration with a value determined with reference to the stock of the REIT or stapled entity or both. The provision also applies to an interest in a partnership formed after March 26, 1998, which meets the provision's other requirements, where the partnership was formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998. If, as of January 1, 1999, more than one partnership owned (directly or indirectly) by either an exempt REIT or stapled entity meets the requirements of the provision, only the largest such partnership (determined by aggregate asset bases) is treated as meeting such requirements.

The conference agreement provides that, for purposes of the exception to the mortgage rules for mortgages held on March 26, 1998, an increase in interest payable on a mortgage (except pursuant to an interest arrangement, such as variable interest, under the mortgage's terms as of March 26, 1998), or

an increase in interest payable as a result of a refinancing, causes the mortgage to cease to qualify for the exception unless the new interest rate meets an arm's-length standard.

The conferees also wish to clarify that in the event that a stapled REIT group ceases to be stapled, the rules treating assets, activities and gross income of members or the stapled REIT group as attributes of the REIT apply only to the portion of the year in which the group was a stapled REIT group. Similarly, where a REIT's or stapled entity's interest in a partnership or subsidiary changes during the year, the rules treating a proportionate part of the assets, activities and gross income of the partnership or subsidiary as attributes of the REIT or stapled entity also apply on a partial-year basis.

E. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment (sec. 5005 of the Senate amendment)

Present Law

In general, a dealer in securities is required to use a mark-to-market method of accounting for securities (sec. 475). A dealer in securities is a taxpayer who regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business, or who regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in certain types of securities with customers in the ordinary course of a trade or business. A security includes an evidence of indebtedness.

Treasury regulations provide that if a taxpayer would be a dealer in securities only because of its purchases and sales of debt instruments that, at the time of purchase or sale, are customer paper with respect to either the taxpayer or a corporation that is a member of the same consolidated group, the taxpayer will not normally be treated as a dealer in securities. However, the regulations allow such a taxpayer to elect out of this exception to dealer status.⁴ For this purpose, a debt instrument is customer paper with respect to a person if: (1) the person's principal activity is selling nonfinancial goods or providing nonfinancial services; (2) the debt instrument was issued by the purchaser of the goods or services at the time of the purchase of those goods and services in order to finance the purchase; and (3) at all times since the debt instrument was issued, it has been held either by the person selling those goods or services or by a corporation that is a member of the same consolidated group as that person.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that certain trade receivables are not eligible for mark-to-market treatment. A trade receivable is subject to the provision if it is a note, bond, debenture, or other evidence of indebtedness arising out of the sale of goods or services by a person the principal activity of which is selling or providing non-financial goods and services and it is held by such person (or a related person) at all times since it was issued.

Under the Senate amendment, a receivable meeting the above definition is not treated as a security for purposes of the mark-to-market rules (sec. 475). Thus, such a receivable is not marked-to-market, even if the taxpayer qualifies as a dealer in other securities. Because trade receivables cease to meet the above definition when they are disposed of (other than to a related person), a taxpayer who regularly sells trade receiv-

ables is treated as a dealer in securities as under present law, with the result that the taxpayer's other securities would be subject to mark-to-market treatment unless an exception applies.

Effective date.—The Senate amendment generally is effective for taxable years ending after the date of enactment. Adjustments required under section 481 as a result of the change in method of accounting generally are required to be taken into account ratably over the four-year period beginning in the first taxable year for which the provision is in effect. However, where the taxpayer terminates its existence or ceases to engage in the trade or business that generated the receivables (except as a result of a tax-free transfer), any remaining balance of the section 481 adjustment is taken into account entirely in the year of such cessation or termination (see sec. 5.04(3)(c) of Rev. Proc. 97-37, 1997-33 I.R.B. 18).

Conference Agreement

The conference agreement follows the Senate amendment with modifications. The conferees wish to clarify that the new provision applies to trade receivables arising from services performed by independent contractors, as well as employees. Thus, for example, if a taxpayer's principal activity is selling non-financial services and some or all of such services are performed by independent contractors, no receivables that the taxpayer accepts for services can be marked-to-market under the new provision. The conferees intend that, pursuant to the authority granted by section 475(g)(1), the Secretary of the Treasury is authorized to issue regulations to prevent abuse of the new exception, including through independent contractor arrangements.

The conference agreement provides that, to the extent provided in Treasury regulations, trade receivables that are held for sale to customers by the taxpayer or a related person may be treated as "securities" for purposes of the mark-to-market rules, and transactions in such receivables could result in a taxpayer being treated as a dealer in securities (sec. 475(c)(1)). It is the intention of the conferees that, unlike the Senate amendment, a taxpayer will not be treated as a dealer in securities based on sales to unrelated persons of receivables subject to the new provision unless the regulatory exception for receivables held for sale to customers applies.

It is the intention of the conferees that, for trade receivables that are excepted from the statutory mark-to-market rules (sec. 475) under the new provision, mark-to-market or lower-of-cost-or-market will not be treated as methods of accounting that clearly reflect income under general tax principles (see sec. 446(b)).

F. Add Vaccines Against Rotavirus Gastroenteritis to the List of Taxable Vaccines (sec. 5006 of the Senate amendment)

Present Law

A manufacturer's excise tax is imposed at the rate of 75 cents per dose on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, and varicella (chicken pox). Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund.

House Bill

No provision.

Senate Amendment

The Senate amendment adds any vaccine against rotavirus gastroenteritis to the list of taxable vaccines.

³Nevertheless, if the REIT's interest in the partnership or subsidiary increases as a result of the contribution, a portion of each of the entity's real property interests other than the interest contributed, reflecting the proportionate increase in the REIT's interest in the entity, will be treated as a non-grandfathered real property interest.

⁴Treas. reg. sec. 1.475(c)-1(b), issued December 23, 1996; the "customer paper election."

Effective date.—The provision is effective for vaccines sold by a manufacturer or importer after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

G. Restrict Special Net Operating Loss Carryback Rules for Specified Liability Losses (sec. 5007 of the Senate amendment)

Present Law

Under present law, that portion of a net operating loss that qualifies as a “specified liability loss” may be carried back 10 years rather than being limited to the general two-year carryback period. A specified liability loss includes amounts allowable as a deduction with respect to product liability, and also certain liabilities that arise under Federal or State law or out of any tort of the taxpayer. In the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to the liability must occur at least 3 years before the beginning of the taxable year. In the case of a liability arising out of a tort, the liability must arise out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurred at least three years before the beginning of the taxable year. A specified liability loss cannot exceed the amount of the net operating loss, and is only available to taxpayers that used an accrual method of accounting throughout the period that the acts (or failures to act) occurred.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, specified liability losses are defined and limited to include (in addition to product liability losses) only amounts allowable as a deduction that are attributable to a liability under a Federal or State law requiring the reclamation of land, decommissioning of a nuclear power plant (or any unit thereof), dismantlement of an offshore drilling platform, remediation of environmental contamination, or payment of workers' compensation, if the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year. As under current law, the redefined specified liability loss cannot exceed the amount of the net operating loss and is only available to taxpayers that used an accrual method of accounting throughout the period that the acts (or failures to act) giving rise to the liability occurred. No inference regarding the interpretation of the specified liability loss carryback rules under present law is intended.

Effective date.—The provision is effective for net operating losses arising in taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

H. Exclusion of Minimum Required Distributions from AGI for Roth IRA Conversions (Sec. 5008 of the Senate Amendment)

Present Law

Under present law, uniform minimum distribution rules generally apply to all types of tax-favored retirement vehicles, including qualified retirement plans and annuities, individual retirement arrangements (“IRAs”) other than Roth IRAs, and tax-sheltered annuities (sec 403(b)).

Under present law, distributions are required to begin no later than the individual's required beginning date (sec. 401(a)(9)). In the case of an IRA, the required beginning date, means the April 1 of the calendar year

following the calendar year in which the IRA owner attains age 70½. The Internal Revenue Service has issued extensive Regulations for purposes of calculating minimum distributions. In general, minimum distributions are includable in gross income in the year of distribution. An excise tax equal to 50 percent of the required distribution applies to the extent a required distribution is not made.

Under present law, all or any part of amounts in a deductible or nondeductible IRA may be converted into a Roth IRA. Only taxpayers with adjusted gross income (“AGI”) of \$100,000 or less are eligible to convert an IRA into a Roth IRA. In the case of a married taxpayer, AGI is the combined AGI of the couple. Married taxpayers filing a separate return are not eligible to make a conversion.

House Bill

No provision.

Senate Amendment

The Senate amendment excludes minimum required distributions from IRAs from the definition of AGI solely for purposes of determining eligibility to convert from an IRA to a Roth IRA. As under present law, the required minimum distribution would not be eligible for conversion and would be includable in gross income.

Effective date.—The provision is effective for taxable years beginning after December 31, 2004.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Same as Senate amendment.

I. Extension of IRS User Fees (sec. 5009 of the Senate amendment)

Present Law

The IRS provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes in the form of ruling letters, determination letters, opinion letters, and other similar rulings or determinations. The IRS is directed by statute to establish a user fee program with respect to such rulings and determinations. Pursuant to this statutory authorization, the IRS establishes a schedule of user fees. The statutory authorization for the IRS user fee program is in effect for requests made before October 1, 2003 (P.L. 104-117).

House Bill

No provision.

Senate Amendment

The Senate amendment extends the IRS user fee program for requests made before October 1, 2007.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

J. Clarify Definition of “Subject to” Liabilities Under Section 357(c) (sec. 3301A of the Senate amendment)

Present Law

Present law provides that the transferor of property recognizes no gain or loss if the property is exchanged solely for qualified stock in a controlled corporation (sec. 351). Code section 357(c) provides that the transferor generally recognizes gain to the extent that the sum of the liabilities assumed by the controlled corporation and the liabilities to which the transferred property is subject exceeds the transferor's basis in the transferred property. If the transferred property is “subject to” a liability, Treasury regula-

tions have indicated that the amount of the liability is included in the calculation regardless of whether the underlying liability is assumed by the controlled corporation. Treas. Reg. sec. 1.357-2(a).

The gain recognition rule of section 357(c) is applied separately to each transferor in a section 351 exchange.

The basis of the property in the hands of the controlled corporation equals the transferor's basis in such property, increased by the amount of gain recognized by the transferor, including section 357(c) gain.

Section 357(c) also applies to reorganizations described in section 368(a)(1)(D).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the distinction between the assumption of a liability and the acquisition of an asset subject to a liability is eliminated. A liability is treated as having been assumed to the extent that, as determined on the basis of facts and circumstances, the transferor is relieved of such liability or any portion thereof (including through an indemnity agreement or other similar arrangement). In the case of the transfer of any property subject to a nonrecourse liability, unless the facts and circumstances indicate otherwise, the transferee is treated as assuming with respect to such property a ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all assets subject to such liability. No inference regarding the tax treatment under present law is intended.

Effective date.—The provision is effective for transfers after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

TITLE VIII. LIMITED TAX BENEFITS UNDER THE LINE ITEM VETO ACT

Present Law

The Line Item Veto Act amended the Congressional Budget and Impoundment Act of 1974 to grant the President the limited authority to cancel specific dollar amounts of discretionary budget authority, certain new direct spending, and limited tax benefits. The Line Item Veto Act provides that the Joint Committee on Taxation is required to examine any revenue or reconciliation bill or joint resolution that amends the Internal Revenue Code of 1986 prior to its filing by a conference committee in order to determine whether or not the bill or joint resolution contains any “limited tax benefits,” and to provide a statement to the conference committee that either (1) identifies each limited tax benefit contained in the bill or resolution, or (2) states that the bill or resolution contains no limited tax benefits. The conferees determine whether or not to include the Joint Committee on Taxation statement in the conference report. If the conference report includes the information from the Joint Committee on Taxation identifying provisions that are limited tax benefits, then the President may cancel one or more of those, but only those, provisions that have been identified. If such a conference report contains a statement from the Joint Committee on Taxation that none of the provisions in the conference report are limited tax benefits, then the President has no authority to cancel any of the specific tax provisions, because there are no tax provisions that are eligible for cancellation under the Line Item Veto Act. If the conference report contains no statement with respect to limited tax

benefits, then the President may cancel any revenue provision in the conference report that he determines to be a limited tax benefit.

Conference Statement

The Joint Committee on Taxation has determined that H.R. 2676 contains the follow-

ing provisions that constitute limited tax benefits within the meaning of the Line Item Veto Act:

Section 3105 (relating to administrative appeal of adverse IRS determination of tax-exempt status of bond issue)

Section 3445(c) (relating to State fish and wildlife permits)

TITLE IX. CORRECTIONS TO THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

The conference agreement includes corrections to the Transportation Equity Act for the 21st Century.

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE "INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998"

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
Title I. Reorganization of Structure and Management of the Internal Revenue Service.												No Revenue Effect		
Title II. Electronic Filing												No Revenue Effect		
Title III. Taxpayer Protection and Rights:														
A. Burden of Proof—apply to only income, estate and gift taxes (permanent)	eca DOE	(1)	-231	-256	-269	-278	-297	-311	-327	-344	-360	-1,035	-1,639	-2,674
B. Proceedings by Taxpayers:														
1. Expansion of authority to award costs and certain fees at prevailing rate and rule 68 provision with net worth limitation (includes outlay effects): with modified hourly cap.	180da DOE		-11	-12	-13	-14	-16	-18	-19	-20	-22	-51	-95	-145
2. Civil damages with respect to unauthorized collection actions (includes outlay effects).	aoa DOE		-2	-15	-25	-30	-25	-25	-25	-25	-25	-122	-125	-247
3. Increase size of cases permitted on small case calendar to \$50,000.	pca DOE											No Revenue Effect		
4. Actions for refund with respect to certain estates which have elected the installment method of payment.	rfa DOE											Negligible Revenue Effect		
5. Extend IRS administrative appeals right to issuers of tax-exempt bonds.	DOE	(1)	-5	-2	-2	-2	-2	-2	-2	-2	-2	-11	-10	-21
6. Civil action for release of erroneous lien	DOE											Negligible Revenue Effect		
C. Relief for Innocent Spouses and for Taxpayers Unable to Manage Their Financial Affairs Due to Disabilities:														
1. Relief for innocent spouses who are no longer married, legally separated, or living apart for 12 consecutive months; House relief for other cases; Secretary of Treasury has authority to reach equitable result.	laa & ulb DOE		-10	-131	-92	-74	-86	-121	-157	-204	-243	-288	-393	-1,013
2. Suspension of statute of limitations on filing refund claims during periods of disability.	tyoo/a DOE		-10	-70	-35	-15	-16	-17	-18	-19	-20	-21	-146	-95
D. Provisions Relating to Interest and Penalties:														
1. Elimination of interest rate differential on overlapping periods of interest on income tax overpayments and underpayments.	tyoo/a DOE		-26	-68	-58	-61	-56	-59	-62	-65	-68	-72	-267	-326
2. Increase refund interest rate of Applicable Federal Rate ("AFR") +3 for individual's taxpayers [2].	2nd & scaqa DOE			-36	-54	-56	-59	-62	-65	-69	-72	-76	-205	-344
3. Reduced penalty on individual's failure to pay during installment agreements.	iapma 12/31/99				-108	-136	-143	-152	-159	-167	-175	-185	-387	-838
4. Mitigation of failure to deposit penalty	drma 180da DOE				-47	-64	-64	-65	-66	-67	-68	-68	-240	-335
5. Suspend accrual of interest and penalties if IRS fails to contact taxpayer within 12 months after a timely-filed return (except for fraud and criminal penalties): (1) for first 5 years, time period is 18 months (instead of 12 months); and (2) provide that termination with respect to specific additional tax liability occurs on earliest notice of such liability.	tyea DOE				-146	-174	-196	-209	-248	-431	-435	-439	-516	-1,762
6. Procedural requirements for imposition of penalties and additions to tax.	nia & paa 12/31/00											Negligible Revenue Effect		
7. Permit personal delivery of section 6672 notices	DOE											No Revenue Effect		
8. Notice of interest charges	nia 12/31/00											No Revenue Effect		
E. Protections for Taxpayers Subject to Audit or Collection Activities:														
1. Due process for IRS collection actions	caia 180da DOE				-11	-7	-7	-7	-7	-8	-8	-8	-32	-38
2. Examination activities:														
a. Extend the attorney client privilege to accountants and other tax practitioners; with exception from both attorney/client privilege and tax practitioner/client privilege for communications relating to corporate tax shelters.	cmo/a DOE	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(4)	(4)
b. Limitation on financial status audits	DOE											No Revenue Effect		
c. Limitation on IRS authority to require production of computer source code and protections against improper disclosure.	sia & saa DOE				-13	-16	-20	-22	-26	-30	-33	-36	-37	-71
d. Prohibition on improper threat of audit activity for tip reporting.	DOE											No Revenue Effect		
e. Allow taxpayers to quash all third-party summonses.	ssa DOE											Negligible Revenue Effect		
f. Permit service of summonses by mail or in person.	ssa DOE											No Revenue Effect		
g. IRS must provide general notice and periodic reports to taxpayers before contacting third parties regarding IRS examination or collection activities with respect to the taxpayer.	180da DOE				(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(4)	(4)
3. Collection activities:														
a. Approval process—IRS to implement approval process for liens, levies, or seizures; clarification of "appropriate".	(6)											Negligible Revenue Effect		
b. Increase the amount exempt from levy to \$6,250 for personal property and \$3,125 for books and tools of trade, indexed for inflation.	lia DOE	(1)	-1	-1	-1	-1	-2	-2	-2	-2	-2	-2	-6	-8
c. Require the IRS to release a levy upon agreement that the amount is not collectible.	lia 12/31/99											Negligible Revenue Effect		
d. Suspend collection by levy during refund suit.	tyba 12/31/98											Negligible Revenue Effect		
e. Require District Counsel review of jeopardy and termination assessments and jeopardy levies.	taa & lma DOE											Negligible Revenue Effect		
f. Increase in amount of certain property on which lien not valid.	DOE											Negligible Revenue Effect		
g. Waive the 10% early withdrawal tax when IRA or qualified plan is levied.	wa 12/31/99					-1	-3	-4	-4	-5	-5	-5	-5	-9

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE "INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998"—Continued

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
h. Prohibit the IRS from selling taxpayer's property for less than the minimum bid.	Soa DOE								No Revenue Effect					
j. Require the IRS to provide an accounting and receipt to the taxpayer (including the amount credited to the taxpayer's account) for property seized and sold.	soa DOE								Negligible Revenue Effect					
J. Require the IRS to study and implement a uniform asset disposal mechanism for sales of seized property to prevent revenue officers from conducting sales.	DOE & 2 years								No Revenue Effect					
K. Codify IRS administrative procedures for seizure of taxpayer's property.	DOE								No Revenue Effect					
I. Procedures for seizure of residences and businesses.	DOE	(1)	-3	-3	-3	-3	-3	-3	-3	-3	-3	-12	-15	-27
4. Provisions relating to examination and collection activities:														
a. Prohibition on extension of statute of limitation for collection beyond 10 years with installment payment exception.	(?)			-9	-13	-16	-18	-19	-19	-21	-14	-38	-101	-139
b. Offers-in-compromise	generally DOE	-1		9	4	4	4	4	4	4	4	17	21	38
c. Notice of deficiency to specify deadlines for filing Tax Court petition.	nma12/13/98								Negligible Revenue Effect					
d. Refund or credit of overpayments before final determination.	DOE								Negligible Revenue Effect					
e. IRS procedures relating to appeal of examination and collections.	DOE								No Revenue Effect					
f. Codify certain fair debt collection procedures	DOE								No Revenue Effect					
g. Ensure availability of installment agreements.	DOE								No Revenue Effect					
h. Prohibit Federal Government officers and employees from requesting taxpayers to give up their rights to sue.	DOE								No Revenue Effect					
F. Disclosures to Taxpayers:														
1. Explanation of joint and several liability	180da DOE								No Revenue Effect					
2. Explanation of Taxpayers' rights in interviews with IRS.	180da DOE		-13	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(4)	(3)	(4)
3. Disclosure of criteria for examination selection	180da DOE								No Revenue Effect					
4. Explanations of appeals and collection process	180da DOE								No Revenue Effect					
5. Require IRS to explain reason for denial for refund.	180da DOE								No Revenue Effect					
6. Statement to taxpayers with installation agreements.	7/1/00								No Revenue Effect					
7. Require IRS to notify all partners of any resignation of the tax matters partner that is required by the IRS, and of the identity of any successor tax matters partnership who was appointed to fill the vacancy created by such resignation.	solmpa DOE	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	-1	-1	-2
8. Require information to taxpayers concerning disclosure of their income tax return information to parties outside the IRS.	DOE								No Revenue Effect					
9. Disclosure of Chief Counsel advice	ai 90da DOE								No Revenue Effect					
G. Low-Income Taxpayer Clinics	DOE								No Revenue Effect					
H. Other Provisions:														
1. Cataloging complaints of IRS employee misconduct.	1/1/00								No Revenue Effect					
2. Archive of records of Internal Revenue Service	DOE								No Revenue Effect					
3. Payment of taxes to the U.S. Treasury [2]	DOE								No Revenue Effect					
4. Clarification of authority of Secretary relating to the making of elections.	DOE								No Revenue Effect					
5. IRS employee contracts	6ma DOE								No Revenue Effect					
6. Require approval of use of pseudonyms by IRS employees.	DOE								No Revenue Effect					
7. Require the IRS to end the use of the illegal tax protestor label.	DOE & rdnr/b	1/1/99							No Revenue Effect					
8. Modify section 6103 to allow the tax-writing committees to obtain data from IRS employees regarding employee and taxpayer abuse.	DOE								No Revenue Effect					
9. Publish telephone numbers for local IRS offices	DOE								No Revenue Effect					
10. Alternative to Social Security numbers for tax return preparers.	DOE								No Revenue Effect					
11. Authorize the Federal government to offset a Federal income tax refund to satisfy a past-due, legally owing State income tax debt.	rpa 12/31/99			2	3	3	3	3	3	4	4	4	8	18
12. Modify section 6050S to require educational institutions to report grant amounts processed through and refunds made by the institution; with clarifications regarding the definition of "qualified tuition and related expenses" and certain other educational institution reporting requirements.	tyba 12/31/98								Negligible Revenue Effect					
I. Studies:														
1. Administration of penalties and interest	1ya DOE								No Revenue Effect					
2. Confidentiality of tax return information	18ma DOE								No Revenue Effect					
3. Noncompliance with internal revenue laws by taxpayers.	1ya DOE								No Revenue Effect					
4. Payments for informants	1ya DOE								No Revenue Effect					
Subtotal, Taxpayer Protections and Rights		-53	-661	-885	-961	-998	-1,085	-1,196	-1,463	-1,545	-1,635	-3,559	-6,925	-10,483
Title IV. Congressional Accountability for the Internal Revenue Service.									No Revenue Effect					
Title V. Additional Provisions:														
A. Change the Holding Period for Long-Term Capital Gains to 12 months.	aptiao/a 1/1/98	35	611	-312	-335	-335	-337	-341	-347	-354	-362	-336	-1,741	-2,077
B. Deductibility of Means Provided for the Convenience of Employer on Employer's Premises.	tybbo/a DOE		-20	-33	-34	-35	-36	-38	-39	-40	-41	-122	-194	-316
C. Instead of Most Favored Nation Status Use Normal Trade Relations Terminology [2].									No Revenue Effect					
Subtotal, Additional Provisions		35	591	-345	-369	-370	-373	-379	-386	-394	-403	-458	-1,935	-2,393
Title VI. Tax Technical Corrections									No Revenue Effect					
Title VII. Revenue Offsets:														
A. Overrule <i>Schmidt Baking</i> with Respect to Vacation Pay and Severance and Other Types of Compensation With Spread.	tyea DOE	593	839	997	456	308	156	163	172	180	189	3,193	860	4,053
B. Freeze Grandfathered Status of Stapled or Paired—Share REITs.	tyea 3/26/98	(9)	1	3	6	10	14	19	26	35	45	20	139	159
C. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment.	tyea DOE	33	317	500	333	117	70	73	77	81	85	1,300	386	1,686
D. Disregard Minimum Distributions in Determining AGI for IRA Conversions to a Roth IRA.	tyba 12/31/04								2,362	2,854	2,812		8,028	8,028

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE "INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998"—Continued

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
Subtotal, Revenue Offsets		626	1,157	1,500	795	435	240	255	2,637	3,150	3,131	4,513	9,413	13,926
Title VIII. Limited Tax Benefits Under the Line Veto Act		<i>No Revenue Effect</i>												
Net Total (Reserved for Future Tax Reduction)		608	1,087	270	-535	-933	-1,218	-1,320	788	1,211	1,093	496	553	1,050
Revenue Effect From Emergency Legislation Per Section 252(e) of the Balanced Budget and Emergency Deficit Control Act:														
1. Abate interest on underpayments by taxpayers in Presidentially declared disaster areas.	dda 12/31/97	-8	-25	-25	-25	-25	-25	-25	-25	-25	-25	-108	-126	-234

¹ Loss of less than \$1 million.
² Estimate provided by the Congressional Budget Office.
³ Loss of less than \$5 million.
⁴ Loss of less than \$25 million.
⁵ Loss of less than \$50 million.
⁶ Generally effective for collection actions commencing after the date of enactment; collections at ACS sites effective for levies imposed after 12/31/00.
⁷ Effective for requests to extend the statute of limitations made after 12/31/99 and to all extensions of the statute of limitations on collections that are open after 12/31/99.
⁸ Loss of less than \$500,000.
⁹ Gain of less than \$500,000.

Legend for "Effective" column: ai=advice issued; aoa=actions occurring after; aptiao/a=amounts properly taken into account on or after; caia=collection actions initiated after; cmo/a=communications made on or after; dda=disasters declared after; DOE=date of enactment; drma=deposits required to be made after; eca=examinations commencing after; lapma=installment agreement payments made after; laa=liability arising after; lia=levies imposed after; lia=levies issued after; lma=levies made after; nia=notices issued after; nma=notices mailed after; paa=penalties assessed after; pca=proceedings commencing after; rdnb=removal designation not required before; rfa=refunds filed after; rpa=refunds payable after; saa=software acquired after; sqca=succeeding calendar quarters beginning after; sia=summons issued after; soa=seizures occurring after; Soa=sales occurring after; sotmpa=selections of tax matters partners after; ssa=summons served after; taa=taxes assessed after; tyba=taxable years beginning after; tyba/a=taxable years beginning after; tybo/a=taxable years beginning before, on, or after; tyoo/a=taxable years open on or after; ulb=unpaid liability before; wa=withdrawals after; 1ya=1 year after; 6ma=6 months after; 18ma=18 months after; 60da=60 days after; 90da=90 days after; and 180da=180 days after.

Note.—Details may not add to totals due to rounding.
 Source: Joint Committee on Taxation.

BILL ARCHER,
 NANCY L. JOHNSON,
 ROB PORTMAN,
 CHARLES B. RANGEL,
 WILLIAM J. COYNE,

Managers on the Part of the House.

BILL ROTH,
 JOHN H. CHAFEE,
 CHUCK GRASSLEY,
 ORRIN HATCH,
 FRANK H. MURKOWSKI,
 DON NICKLES,
 PHIL GRAMM,
 DANIEL P. MOYNIHAN,
 MAX BAUCUS,
 BOB GRAHAM,
 JOHN BREAUX,
 BOB KERREY,

From the Committee on Governmental Affairs:

FRED THOMPSON,
 SAM BROWNBACK,
 THAD COCHRAN,

Managers on the Part of the Senate.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The SPEAKER pro tempore. Pursuant to House Resolution 482 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4101.

□ 1428

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4101) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, with Mr. LaHood in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the

demand for a recorded vote on the amendment offered by the gentleman from Oklahoma (Mr. COBURN) had been postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 482, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: The amendment offered by the gentleman from Oklahoma (Mr. COBURN); the amendment offered by the gentleman from Florida (Mr. MILLER); and the amendment offered by the gentleman from California (Mr. ROYCE).

The Chair will reduce to 5 minutes the time for any electronic vote after the second vote in this series.

AMENDMENT OFFERED BY MR. COBURN

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Oklahoma (Mr. COBURN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 223, noes 202, not voting 8, as follows:

[Roll No. 260]

AYES—223

Aderholt	Bereuter	Burr	Coburn	Kasich	Radanovich
Archer	Berry	Burton	Collins	Kildee	Rahall
Armey	Bilirakis	Buyer	Combest	Kim	Redmond
Bachus	Bliley	Callahan	Cook	King (NY)	Regula
Baker	Blunt	Calvert	Costello	Kingston	Riggs
Ballenger	Boehner	Camp	Cox	Kleczka	Riley
Barcia	Bonilla	Canady	Cramer	Klink	Roemer
Barr	Bono	Chabot	Crane	Knollenberg	Rogan
Barrett (NE)	Borski	Chambliss	Crapo	Kucinich	Rogers
Bartlett	Brady (TX)	Chenoweth	Cubin	LaFalce	Rohrabacher
Barton	Bryant	Christensen	Cunningham	LaHood	Ros-Lehtinen
Bateman	Bunning	Coble	Deal	Largent	Royce
			DeLay	Latham	Ryun
			Diaz-Balart	LaTourette	Salmon
			Dickey	Lewis (CA)	Sanford
			Doolittle	Lewis (KY)	Saxton
			Dreier	Linder	Scarborough
			Duncan	Lipinski	Schaefer, Dan
			Dunn	Livingston	Schaffer, Bob
			Ehlers	LoBiondo	Sensenbrenner
			Emerson	Lucas	Sessions
			English	Manton	Shadegg
			Ensign	Manzullo	Shimkus
			Everett	Mascara	Shuster
			Ewing	McCollum	Skeen
			Forbes	McCrery	Skelton
			Fossella	McDade	Smith (MI)
			Fox	McHugh	Smith (NJ)
			Galleghy	McInnis	Smith (OR)
			Gekas	McIntosh	Smith (TX)
			Gibbons	McIntyre	Smith, Linda
			Gillmor	McKeon	Snowbarger
			Goode	McNulty	Solomon
			Goodlatte	Metcalf	Souder
			Goodling	Mica	Spence
			Goss	Mollohan	Stearns
			Graham	Moran (KS)	Stenholm
			Gutknecht	Murtha	Stump
			Hall (OH)	Myrick	Stupak
			Hall (TX)	Nethercutt	Sununu
			Hansen	Neumann	Talent
			Hastert	Ney	Tauzin
			Hastings (WA)	Northup	Taylor (MS)
			Hayworth	Norwood	Taylor (NC)
			Hefley	Nussle	Thornberry
			Herger	Oberstar	Thune
			Hill	Ortiz	Tiahrt
			Hilleary	Oxley	Trafficant
			Hobson	Packard	Walsh
			Hoekstra	Pappas	Wamp
			Holden	Parker	Watkins
			Hostettler	Paul	Watts (OK)
			Hulshof	Paxon	Weldon (FL)
			Hunter	Pease	Weldon (PA)
			Hutchinson	Peterson (MN)	Weller
			Hyde	Peterson (PA)	Weygand
			Inglis	Petri	Whitfield
			Istook	Pickering	Wicker
			Jenkins	Pitts	Wolf
			John	Pombo	Young (AK)
			Johnson, Sam	Portman	Young (FL)
			Jones	Poshard	
			Kanjorski	Quinn	

NOES—202

Abercrombie Frost Moran (VA)
 Ackerman Furse Morella
 Allen Ganske Nadler
 Andrews Gejdenson Neal
 Baesler Gephardt Obey
 Baldacci Gilchrest Olver
 Barrett (WI) Gilman Owens
 Bass Granger Pallone
 Becerra Green Pascrell
 Bentsen Greenwood Pastor
 Berman Gutierrez Payne
 Bilbray Harman Pelosi
 Bishop Hastings (FL) Pickett
 Blagojevich Hefner Pomeroy
 Blumenauer Hilliard Porter
 Boehlert Hinchey Price (NC)
 Bonior Hinojosa Pryce (OH)
 Boswell Hoolley Ramstad
 Boucher Horn Rangel
 Boyd Houghton Reyes
 Brady (PA) Hoyer Rivers
 Brown (CA) Jackson (IL) Rodriguez
 Brown (FL) Jackson-Lee Rothman
 Brown (OH) (TX) Roukema
 Campbell Jefferson Roybal-Allard
 Capps Johnson (CT) Rush
 Cardin Johnson (WI) Sabo
 Carson Johnson, E. B. Sanchez
 Castle Kaptur Sanders
 Clay Kelly Sandlin
 Clayton Kennedy (MA) Capps
 Clement Kennedy (RI) Schumer
 Clyburn Kennelly Scott
 Condit Kilpatrick Serrano
 Conyers Kind (WI) Shaw
 Cooksey Klug Shays
 Coyne Kolbe Sherman
 Cummings Lampson Siskisky
 Danner Lantos Skaggs
 Davis (FL) Lazio Smith, Adam
 Davis (IL) Leach Snyder
 Davis (VA) Lee Spratt
 DeFazio Levin Stabenow
 DeGette Lewis (GA) Stark
 Delahunt Lofgren Stokes
 DeLauro Lowey Strickland
 Deutsch Luther Tanner
 Dicks Maloney (CT) Tauscher
 Dixon Maloney (NY) Thomas
 Doggett Martinez Thompson
 Dooley Matsui Thurman
 Edwards McCarthy (MO) Tierney
 Ehrlich McCarthy (NY) Torres
 Engel McDermott Towns
 Eshoo McGovern Turner
 Etheridge McHale Upton
 Evans McKinney Velazquez
 Farr Meehan Vento
 Fattah Meek (FL) Visclosky
 Fawell Meeks (NY) Waters
 Fazio Menendez Watt (NC)
 Filner Millender Waxman
 Foley McDonald Wexler
 Ford Miller (CA) White
 Fowler Miller (FL) Wise
 Frank (MA) Minge Woolsey
 Franks (NJ) Mink Wynn
 Frelinghuysen Moakley Yates

NOT VOTING—8

Cannon Gonzalez Markey
 Dingell Gordon Slaughter
 Doyle Hamilton

□ 1449

Mr. PORTMAN and Mr. BONILLA changed their vote from "no" to "aye." So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MILLER OF FLORIDA

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Florida (Mr. MILLER) of Florida on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 167, noes 258, answered "present" 1, not voting 7, as follows:

[Roll No. 261]
 AYES—167

Allen Greenwood Myrick
 Andrews Gutierrez Nadler
 Archer Hall (OH) Neumann
 Armev Hansen Ney
 Barr Hayworth Northup
 Barrett (WI) Hefley Olver
 Bartlett Hilliary Owens
 Bass Hinchey Pallone
 Berman Hobson Pappas
 Bilirakis Hoekstra Pascrell
 Blagojevich Blumentauer Paul
 Blumenauer Hostettler Peterson (PA)
 Boehlert Hoyer Petri
 Bono Hulshof Pitts
 Borski Hutchinson Porter
 Brady (PA) Hyde Portman
 Brown (OH) Inglis Pryce (OH)
 Campbell Jackson (IL) Quinn
 Capps Johnson (CT) Radanovich
 Cardin Kanjorski Ramstad
 Castle Kasich Regula
 Chabot Kelly Rigg
 Coburn Kennedy (MA) Rogan
 Collins Kennedy (RI) Rohrabacher
 Cook Kennelly Ros-Lehtinen
 Cox Kim Roukema
 Coyne Kind (WI) Royce
 Crane Kingston Rush
 Davis (IL) Klug Salmon
 Davis (VA) Kolbe Sanford
 Deal Kucinich Sawyer
 DeFazio LaFalce Scarborough
 DeLay Largent Schumer
 Deutsch LaTourette Sensenbrenner
 Dickey Lazio Shadegg
 Doggett Linder Shaw
 Duncan Lipinski Shays
 Dunn LoBiondo Skaggs
 Ehrlich Lowey Smith (NJ)
 Engel Maloney (CT) Smith, Linda
 English Maloney (NY) Snowbarger
 Ensign Manzullo Souder
 Fawell McCarthy (MO) Sununu
 Forbes McCarthy (NY) Tauscher
 Fossella McDade Tierney
 Fox McHale Upton
 Frank (MA) McHugh Velazquez
 Franks (NJ) McInnis Visclosky
 Frelinghuysen McIntosh Wamp
 Gekas McKinney Waxman
 Gibbons McNulty Weldon (PA)
 Gilchrest Meehan White
 Goodlatte Miller (CA) Wolf
 Goodling Miller (FL) Yates
 Gordon Moran (VA) Young (FL)
 Goss Morella

NOES—258

Abercrombie Brown (FL) Cunningham
 Ackerman Bryant Danner
 Aderholt Bunning Davis (FL)
 Bachus Burr DeGette
 Baesler Burton Delahunt
 Baker Buyer DeLauro
 Baldacci Callahan Diaz-Balart
 Ballenger Calvert Dicks
 Barcia Camp Dixon
 Barrett (NE) Canady Dooley
 Barton Carson Doolittle
 Bateman Chambliss Dreier
 Becerra Chenoweth Edwards
 Bentsen Christensen Ehlers
 Bereuter Clay Emerson
 Berry Clayton Eshoo
 Bilbray Clement Etheridge
 Bishop Clyburn Evans
 Bliley Coble Everett
 Blunt Combest Ewing
 Boehner Condit Farr
 Bonilla Conyers Fattah
 Bonior Cooksey Fazio
 Boswell Costello Filner
 Boucher Cramer Foley
 Boyd Crapo Ford
 Brady (TX) Cubin Fowler
 Brown (CA) Cummings Frost

Furse Mascara Saxton
 Gallegly Matsui Schaefer, Dan
 Ganske McCollum Schaffer, Bob
 Gejdenson McCrery Scott
 Gephardt McDermott Serrano
 Gillmor McGovern Sessions
 Gilman McIntyre Sherman
 Goode McKeon Shimkus
 Graham Meek (FL) Shuster
 Granger Meeks (NY) Skeen
 Green Menendez Skelton
 Gutknecht Metcalf Smith (MI)
 Hall (TX) Mica Smith (OR)
 Harman Millender-Smith (TX)
 Hastert McDonald Smith, Adam
 Hastings (FL) Minge Snyder
 Hastings (WA) Mink Solomon
 Hefner Moakley Spence
 Herger Mollohan Spratt
 Hill Moran (KS) Stabenow
 Hilliard Murtha Stark
 Hinojosa Neal Stearns
 Holden Nethercutt Stenholm
 Hoolley Norwood Stokes
 Houghton Nussle Strickland
 Hunter Oberstar Stump
 Istook Obey Stupak
 Jackson-Lee Ortiz Talent
 (TX) Oxley Tanner
 Jefferson Packard Tauzin
 Jenkins Parker Taylor (MS)
 John Pastor Taylor (NC)
 Johnson (WI) Paxon Thomas
 Johnson, E.B. Payne Thompson
 Johnson, Sam Pease Thornberry
 Jones Pelosi Thune
 Kaptur Peterson (MN) Thurman
 Kildee Pickering Tiahrt
 Kilpatrick Pickett Torres
 King (NY) Pombo Towns
 Kleczka Pomeroy Traficant
 Klink Poshard Turner
 Knollenberg Price (NC) Vento
 LaHood Rahall Walsh
 Lampson Rangel Waters
 Lantos Redmond Watkins
 Latham Reyes Watt (NC)
 Leach Riley Watts (OK)
 Lee Rivers Weldon (FL)
 Levin Rodriguez Weller
 Lewis (CA) Roemer Wexler
 Lewis (GA) Rogers Weygand
 Lewis (KY) Rothman Whitfield
 Livingston Roybal-Allard Wicker
 Lofgren Ryun Wise
 Lucas Sabo Woolsey
 Luther Sanchez Wynn
 Manton Sanders Young (AK)
 Martinez Sandlin

ANSWERED "PRESENT"—1

Siskisky

NOT VOTING—7

Cannon Gonzalez Slaughter
 Dingell Hamilton
 Doyle Markey

□ 1506

Mr. ISTOOK changed his vote from "aye" to "no."

Messrs. ARCHER, MALONEY of Connecticut, and BARTLETT of Maryland changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. ROYCE

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. ROYCE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a five-minute vote.

The vote was taken by electronic device, and there were—ayes 118, noes 307, not voting 8, as follows:

[Roll No. 262]

AYES—118

Andrews	Goss	Myrick
Archer	Hastert	Nadler
Army	Hayworth	Neal
Bachus	Hefley	Neumann
Barr	Hobson	Ney
Barrett (WI)	Hoekstra	Oliver
Bass	Horn	Pascrell
Bilbray	Hostettler	Paul
Blagojevich	Hyde	Petri
Boehrlert	Inglis	Porter
Borski	Istook	Portman
Brady (PA)	Kasich	Pryce (OH)
Brown (OH)	Kelly	Ramstad
Callahan	Kennedy (MA)	Rivers
Campbell	Kennedy (RI)	Rogan
Castle	Kennelly	Rohrabacher
Chabot	Kind (WI)	Rothman
Coburn	Klecicka	Royce
Collins	Klink	Salmon
Cox	Kolbe	Sanders
Coyne	Kucinich	Sanford
Crane	Largent	Saxton
Davis (VA)	Linder	Scarborough
DeFazio	Lipinski	Schumer
DeLay	LoBiondo	Sensenbrenner
Doggett	Lowey	Shadegg
Duncan	Luther	Shaw
Ehlers	Maloney (CT)	Shays
Ehrlich	Manzullo	Shuster
English	Mascara	Stark
Ensign	McCarthy (NY)	Sununu
Fattah	McCollum	Taylor (MS)
Fawell	McDade	Tierney
Fossella	McInnis	Vento
Fowler	McKinney	Visclosky
Fox	McNulty	Wamp
Frank (MA)	Meehan	Waxman
Franks (NJ)	Miller (FL)	Weldon (PA)
Gejdenson	Moran (VA)	
Gillmor	Morella	

NOES—307

Abercrombie	Christensen	Ford
Ackerman	Clay	Frelinghuysen
Aderholt	Clayton	Frost
Allen	Clement	Furse
Baesler	Clyburn	Gallegly
Baker	Coble	Ganske
Baldacci	Combust	Gekas
Ballenger	Condit	Gephardt
Barcia	Conyers	Gibbons
Barrett (NE)	Cook	Gilchrest
Bartlett	Cooksey	Gilman
Barton	Costello	Goode
Bateman	Cramer	Goodlatte
Becerra	Crapo	Goodling
Bentsen	Cubin	Gordon
Bereuter	Cummings	Graham
Berman	Cunningham	Granger
Berry	Danner	Green
Bilirakis	Davis (FL)	Greenwood
Bishop	Davis (IL)	Gutierrez
Bliley	Deal	Gutknecht
Blumenauer	DeGette	Hall (OH)
Blunt	Delahunt	Hall (TX)
Boehner	DeLauro	Hansen
Bonilla	Deutsch	Harman
Bonior	Diaz-Balart	Hastings (FL)
Bono	Dickey	Hastings (WA)
Boswell	Dicks	Hefner
Boucher	Dixon	Herger
Boyd	Dooley	Hill
Brady (TX)	Doolittle	Hilleary
Brown (CA)	Dreier	Hilliard
Brown (FL)	Dunn	Hinchey
Bryant	Edwards	Hinojosa
Bunning	Emerson	Holden
Burr	Engel	Hoolley
Burton	Eshoo	Houghton
Buyer	Etheridge	Hoyer
Calvert	Evans	Hulshof
Camp	Everett	Hunter
Canady	Ewing	Hutchinson
Capps	Farr	Jackson (IL)
Cardin	Fazio	Jackson-Lee
Carson	Filner	(TX)
Chambliss	Foley	Jefferson
Chenoweth	Forbes	Jenkins

John	Murtha	Skaggs
Johnson (CT)	Nethercutt	Skeen
Johnson (WI)	Northup	Skelton
Johnson, E. B.	Norwood	Smith (MI)
Johnson, Sam	Nussle	Smith (NJ)
Jones	Oberstar	Smith (OR)
Kanjorski	Obey	Smith (TX)
Kaptur	Ortiz	Smith, Adam
Kildee	Owens	Smith, Linda
Kilpatrick	Oxley	Snowbarger
Kim	Packard	Snyder
King (NY)	Pallone	Solomon
Kingston	Pappas	Souder
Klug	Parker	Spence
Knollenberg	Pastor	Spratt
LaFalce	Paxon	Stabenow
LaHood	Payne	Stearns
Lampson	Pease	Stenholm
Lantos	Pelosi	Stokes
Latham	Peterson (MN)	Strickland
LaTourette	Peterson (PA)	Stump
Lazio	Pickering	Stupak
Leach	Pickett	Talent
Lee	Pitts	Tanner
Levin	Pombo	Tauscher
Lewis (CA)	Pomeroy	Tauzin
Lewis (GA)	Poshard	Taylor (NC)
Lewis (KY)	Price (NC)	Thomas
Livingston	Quinn	Thompson
Lofgren	Radanovich	Thornberry
Lucas	Rahall	Thune
Maloney (NY)	Rangel	Thurman
Manton	Redmond	Tiahrt
Martinez	Regula	Towns
Matsui	Reyes	Trafficant
McCarthy (MO)	Riggs	Turner
McCrery	Riley	Upton
McDermott	Rodriguez	Velazquez
McGovern	Roemer	Walsh
McHale	Rogers	Waters
McHugh	Ros-Lehtinen	Watkins
McIntosh	Roukema	Watt (NC)
McIntyre	Royal-Allard	Watts (OK)
McKeon	Rush	Weldon (FL)
Meek (FL)	Ryun	Weller
Meeks (NY)	Sabo	Wexler
Menendez	Sanchez	Weygand
Metcalf	Sandlin	White
Mica	Sawyer	Whitfield
Millender-McDonald	Schaefer, Dan	Wicker
Miller (CA)	Schaffer, Bob	Wise
Minge	Scott	Wolf
Mink	Serrano	Woolsey
Moakley	Sessions	Wynn
Mollohan	Sherman	Yates
Moran (KS)	Shimkus	Young (AK)
	Sisisky	Young (FL)

NOT VOTING—8

□ 1515

Mr. BOEHLERT changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. SANDERS

Mr. SANDERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SANDERS:
Insert before the short title the following new section:

SEC. _____. The amounts otherwise provided by this Act are revised by adding an amount for programs included in Section 402 of PL 104-127 \$10,000,000.

Mr. SANDERS. Mr. Chairman, I am proud to offer this bipartisan amendment with the gentleman from New Jersey (Mr. LOBIONDO) to increase nutrition programs for senior citizens by \$10 million.

Last year, the gentleman from New Jersey and I offered a similar amendment which passed on the floor of this House, but which did not survive the conference committee. This year, we are going to do our best to see that it does survive the conference.

Mr. Chairman, the truth of the matter is that as a wealthy Nation we do not treat our senior citizens with the kind of respect that we should. Half of the seniors in this country have incomes of under \$15,000 a year. Four million live in poverty, and 16 million in near poverty.

Most shamefully in this country today, which recently has seen a proliferation of millionaires and billionaires, tens and tens of thousands of senior citizens are malnourished and do not get the kind of nutritious diet they require. Sixteen percent of the people who receive food from emergency food banks are elderly people 65 years of age or older.

Studies conducted at the University of Florida found that over 66 percent of beneficiaries of senior nutrition programs are at moderate to high risk of malnutrition.

Mr. Chairman, that is not what should be going on in the United States of America. We must do better. And the gentleman from New Jersey (Mr. LOBIONDO) and I are trying to do that.

Mr. Chairman, this amendment funds senior commodity programs which provide grants, either food or cash, to States so that local organizations can prepare meals delivered to elderly persons in congregate settings or delivered to their homes through such programs as the Meals on Wheels program.

Senior nutrition programs are a cost-effective, intelligent program which provide nutritious meals to some of the most vulnerable citizens in our country, senior citizens who are too weak and too frail to prepare their own meals.

This program also provides funding to congregate meal sites where seniors not only get nutrition, but where they are able to get a chance to get out of their homes, to mingle with other senior citizens and to improve their quality of life. In Vermont and throughout this country, these are wonderful programs which work very, very well.

Mr. Chairman, this is an enormously cost-effective program. For every \$1 spent on senior nutrition programs, \$3 were saved from Medicare and Medicaid. It is obviously that if we keep seniors healthy, they need to go to the doctor less, they need to go to the hospital less, they need less for prescription drugs.

Mr. Chairman, the problem that we are facing is that 41 percent of the Meals on Wheels programs have a waiting list. That is part of the problem that the gentleman from New Jersey and I are addressing. This is an excellent program, but there are long waiting lists all over this country.

Mr. Chairman, this amendment increases funding in this program from \$141 million to \$151 million. This simply brings us back to where we were in fiscal year 1996. This money is offset by a \$10 million cut already brought about in the Bass-DeFazio amendment on animal damage control that was passed yesterday.

The bottom line is that the needs of senior citizens are great. We have hungry seniors. That should not be the case in this country. This is a cost-effective program, and I urge support for this program.

Mr. LOBIONDO. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I thank the gentleman from Vermont (Mr. SANDERS) for his work on this issue last year and again this year.

I want to associate myself with the remarks that the gentleman from Vermont made about some of the aspects of this program that are so very important for my colleagues, for all of us to understand.

These are programs that make a difference. These are programs that are making a difference to people whose lives in many cases are very, very dark and shadowy. They are senior citizens who are shut-ins, who do not have the ability to get out on their own. In many cases this is the only social contact they have for a whole day. This is the only time they receive a hot meal and someone to check on them.

Mr. Chairman, I know that in my district I have taken the time to go out to see how some of these programs work firsthand, to actually be with volunteers who are delivering the meals. That is another aspect. In many cases there are volunteers who are giving of their own time to make a difference by participating in the program.

So when we combine all of these factors together, that it is cost-effective, that for every dollar we spend we are saving three, to combine this with the fact that for a senior citizen who may have a problem there is a volunteer who is going to be, on a daily basis, giving a physical check, how do we measure these benefits? They are far beyond the \$10 million that we are asking for.

I am very appreciative that the gentleman from New Mexico (Chairman SKEEN) has agreed to consider this amendment, and I thank my colleague from Vermont.

Mr. SKEEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to tell the gentleman from Vermont (Mr. SANDERS) that we admire his tenacity, sagacity, endurance, and what a wonderful age to be that lively. And we are willing to accept the gentleman's amendment and hope that he gets some rest this evening.

Mr. FAZIO of California. Mr. Chairman, will the gentleman yield?

Mr. SKEEN. I yield to the gentleman from California.

Mr. FAZIO of California. I would just like to associate myself with the sagacity of the gentleman from New Mexico (Mr. SKEEN) in accepting this amendment, and indicate that I would hope we could accommodate the needs of the seniors as the gentleman has outlined them as we proceed with this bill down the road.

Mr. SANDERS. Mr. Chairman, will the gentleman yield?

Mr. SKEEN. I yield to the gentleman from Vermont.

Mr. SANDERS. Mr. Chairman, I thank the gentleman from New Mexico (Chairman SKEEN) very much for his acceptance of this amendment. It has been a long morning. I grant the gentleman that. But I think it is worth it, and I hope to work with him in conference so that we can stand up for senior citizens.

So many of them are really hurting, and I know that the gentleman agrees that this is an important program. I thank him very much.

Mr. SKEEN. Mr. Chairman, reclaiming my time, I could not ask for better company or a better neighborhood to operate.

Mr. SMITH of New Jersey. Mr. Chairman, I rise today in strong support of the amendment to HR 4101 offered today by my friend and colleague from New Jersey, Mr. LOBIONDO, and Mr. SANDERS of Vermont. The amendment will provide an additional \$10 million for Senior Nutrition Programs, which support state and local efforts, offset with a minor reduction in overhead and salaries at the Food and Drug Administration. This amendment will restore funding for this vital senior program to its FY 1996 level of \$150 million.

As we make the tough choices needed to keep our budget balanced, we cannot forget the needs of our senior citizens, most of whom live on fixed incomes and have limited means.

For many of these senior-citizens, the meals provided by these programs represent their main meal for the day. In 1996, the Mercer County, New Jersey Office on Aging reported that 1,483 persons received almost 119,839 nutritious meals provided in part under the Older Americans Act. In Ocean County, Phil Rubenstein, Executive Director of the Ocean County Office of Senior Services, has stated that approximately 600 individuals a day will eat a meal and enjoy the company of others at a congregate nutrition site. The situation in Burlington County and Monmouth County are very similar.

Senior Nutrition Programs are cost effective. According to the Department of Health and Human Services, for every \$1 spent, nearly \$3 is saved in other health care programs like Medicare and Medicaid. Mr. Speaker, this amendment should be a "no brainer," and I urge all of my colleagues to support the LoBiondo/Sanders amendment to HR 4101.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. SANDERS).

The amendment was agreed to.

Mr. ROEMER. Mr. Chairman, I rise to strike the last word.

Mr. Chairman, in this country, when we have a threat from a foreign government or foreign entity, we allocate or appropriate sufficient resources in the Defense Department to fight it. When we have a threat from disease, we allocate sufficient resources to the NIH, the National Institutes of Health, and through technology and science to fight it.

What I worry about, Mr. Chairman, in this bill is we have responsibility for the food safety of the American citizen, and I worry that we are not appropriat-

ing sufficient resources to protect the American people.

Mr. Chairman, I am not one as a conservative Democrat that wants to throw money at problems, so I do not come at this issue saying that we need to throw money at the food safety issue in America today. What I do say is we need to analyze the problem and allocate our resources accordingly.

First of all, with the allocation in this budget we are 82 percent less than the amount the administration requested. Eighty-two percent less than the administration requested.

Now, is that a concern, Mr. Chairman, at this time in America? I think we need to allocate more resources for three reasons.

One is we have a record number, a record number of imports of food into this country. A record number of food imports into America. Right now 9,000 Americans die and another 33 million become ill each year from food-borne pathogens. Nine thousand die, 33 million people will get sick in this country, the wealthiest country in the world.

Currently, less than two-tenths of 1 percent of all imported produce is being inspected for pathogen contamination. Let me repeat that to my colleagues. Less than two-tenths of 1 percent of all imported produce is being inspected for pathogen contamination. Now, I think that is a serious problem, Mr. Chairman. I think that is a serious concern to protect American citizens. That is the first reason we need to come up to the President's request.

The second is, it is going to cost a little money to start using science and technology instead of smelling and poking, the traditional method. We need to move from using the traditional method that we used before, that is antiquated and outdated, and move into the new century, the next century, and use the available technology that can protect the American citizen.

And lastly, Mr. Chairman, a compelling reason to allocate more resources, we have the largest outbreak of E. coli in the country's history today and last week, and last night. Four thousand Americans became sick in Illinois from E. coli. We have an outbreak on the East Coast in New England. We have an outbreak in Georgia where children are in the hospital on the critical list and potentially at risk of dying from E. coli.

□ 1530

Mr. Chairman, this is a very significant problem. We are not a developing country. We are a superpower. When we have threats in defense, we meet them. When we have threats from disease, we meet them. When we have threats in food safety, Mr. Chairman, we better meet them.

This bill does not meet them with the threat out there in the three areas that I pointed out. I would hope that our chairman, our distinguished chairman and ranking member would work

to address this very, very important issue for the safety of our children, for the food safety of our adults, for the 9,000 Americans that will die, for the 33 million Americans that will become sick, and for the lack of resources that we need to devote to science and technology at the current time.

Mr. Chairman, I strongly encourage this committee to revisit this issue and get more serious about allocating sufficient resources for the E. coli outbreak that we have, for the record imports that we have coming into this country, and for the need to protect our children.

Mr. SMITH of Michigan. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I just want to comment additionally on food safety. And I would like to point out what was done in terms of funding, what was done in the research authorization bill passed through the Committee on Agriculture and ultimately, law. Food safety was given a high priority. We designated in that legislation that food safety research should have a priority, both in the detection of food-borne pathogens and in reducing food-borne pathogens. In the effort to make sure that the food that America eats is healthy both the Research Authorization bill and this appropriation bill gives priority.

I would like to point out to my colleagues we included language in the authorization bill important in assuring coordination of the activities of the Department of Agriculture, the Centers for Disease Control and the Food and Drug Administration. We directed that those three agencies of government start working together now to coordinate their efforts in the event of a health risk from food-borne pathogens. A very important part of our food safety efforts must be preparedness. USDA has already designated food safety efforts as a priority. Food and Drug has already designated it as a priority, and the Centers for Disease Control has of course always had it as a priority. The coordination of efforts at the local, state and national level is important as is research and education.

I think most of us agree that this is a very important aspect of how we make sure that disease outbreaks from food-borne pathogens is minimized. As we become more and more dependent on additional food products coming in from the other countries, because of new regulations, and I might add amendments, that put our farmers at a competitive disadvantage, food safety will become an ever more important issue.

Mr. CALLAHAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate the indulgence of the House to talk about an agricultural problem. Actually, the jurisdiction for the solution to this problem lies within the U.S. Customs Service. But I went to the chairman of the Subcommittee on Treasury Postal Service, and General Government this morning and asked him to enter into a colloquy

with me in order that I could explain this very serious problem that ironically is facing the tree growers and the lumber manufacturers of Arizona also.

His staff informed me that he did not want to have a colloquy with me. So, Mr. Chairman, with the indulgence of the Chair, I want to talk just a few minutes.

We have the Canadians subsidizing their lumber industry and shipping lumber to the United States of America against the U.S.-Canada softwood lumber agreement, and selling it cheaper than our lumber people, our tree growers, can get it out of the mill in South Alabama, in Maine, all over this country.

Those of us on the Forestry 2000 Task Force, which represents members of this Congress who have lumber interests in our district, are coming to this body to talk about this very serious problem.

We have an agreement with Canada. Canada agreed they would not unfairly subsidize their sawmills in Canada and put our sawmills at a tremendous disadvantage. Canada is violating the agreement. The Customs Service is aware of the fact that they are breaking the agreement, yet they refuse to police it. Until sufficient time as we recognize that we cannot tolerate the Canadians or anybody else violating agreements, then we are going to continue to have this problem.

I am notifying those managing the Treasury/Postal bill that when that bill comes to the floor, many of us are going to vote against it. Until such time as Customs recognizes that they are going to enforce the law of the land and that they are going to enforce these treaties, they are going to have trouble getting their money out of the Congress of the United States.

To those members of the Forestry 2000 Task Force, I encourage them to be prepared to talk on the Treasury/Postal bill. For those of you from Arizona who have the same problems as they have in Alabama and in Texas, I encourage you to do a little bit of research and let us emphasize, even to the point of a possible amendment reducing the ability of the Customs Department's to be effective; since they are already ineffective, we will just reduce their appropriations.

Mr. Chairman, I appreciate the Chair's tolerance and patience on this. I know that the jurisdiction for the policing of this trade agreement does not fall within the realm of the Department of Agriculture, but it is an agricultural problem because it impacts every farmer who grows a tree in the United States of America.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do not plan on taking the full 5 minutes but only a moment. I would like to associate myself in part with the comments of the gentleman from Indiana (Mr. ROEMER).

I do not know how many Members have ever had food poisoning. I bet al-

most every Member here has had food poisoning at one time, not only from products but even from local problems that we have. We had in California a whole mess of strawberries with hepatitis come across from Mexico. It not only hurt people's sickness but our own local strawberry growers were hurt because people were afraid to buy strawberries. So there does need to be more control. I had a child in my district die of E. coli and the parents told me, "We prayed, we prayed for our child to die because they were in such agony."

I mean, if you think about that and the dollars that we put into research, especially for E. coli, this is a problem that is not going to go away. They keep telling us that this goes away. This is fecal matter that sets on beef or meat products and is not cleaned off before it goes to the consumer. We have got to get a handle on this.

I laud what the committee has done as far as focusing on the issue of food safety. But it is an area in conference that we need to address.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

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

Mr. ROEMER. Mr. Chairman, I appreciate the gentleman from California's comments. I just want to associate myself with his concern, especially for the children in this country that can potentially contract E. coli.

As the gentleman knows, children can get different strains. The strain in Illinois apparently is a less severe strain. The strain currently that has had the outbreak in Georgia is the much more severe strain that has a number of children in the hospital, that has the potential to shut down kidneys and the liver and potentially kill these children in Atlanta. And this is something that this committee and this Congress needs to do, not only for the children of the country, but for the safety of all Americans, where 9,000 people will die in this country because of this kind of threat and 33 million Americans will get sick. This is a particularly devastating, much more severe E. coli outbreak on children 5 and under.

I would strongly recommend that we take another look at the funding levels in conference with the Senate and that we do the duty that I know the chairman, our distinguished chairman from New Mexico and our ranking member from Ohio want to do, and that we do not wait for more children to get sick, and we try to come up to the President's level to protect the people in this country.

Mr. CUNNINGHAM. Reclaiming my time, Mr. Chairman, I would say the President's budget, if we enacted the President's budget we are going to have billions of dollars in new taxes and billions of dollars in new spending. There are areas which I think we can add and this is one of them.

Ms. STABENOW. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like this afternoon to rise and associate myself with the remarks of my colleagues on both sides of the aisle who talked about food safety for a moment.

It happens that the strawberries that the gentleman mentioned that were brought in and eaten by children were eaten in my district in Trenton, Michigan, in southern Genesee County. In fact, my staff persons's daughter was one of the children that ate the strawberries. Fortunately, after monitoring her health, she did not get deathly sick, but this was a very, very serious issue for the families in my district.

I would applaud the subcommittee and the committee for putting together a budget that makes sense in a number of areas. I would only urge, as has been said, that we focus more strongly, as we move towards conference committee, on the issue of food safety. We have passed an agricultural research bill that we should all celebrate, that makes sense, that does put food safety at a top priority, that does create a crisis management team for USDA to move in when there is a crisis in a community and be able to respond working with local and State officials. But there is more to be done.

I have sponsored a safe food action plan, along with the chairman today who is presiding, to focus on food safety throughout the agricultural budget, particularly not only in research but in transferring that research into technology. If we develop faster E. coli testing, and in fact that is being done in my district in Michigan, we need to be able to transfer that to the private sector so we can get tools directly into the hands of farmers and producers.

I wanted to also indicate that we have one of the premier food safety research facilities at Michigan State University, the National Food Safety and Toxicology Center, where we just recently did a national conference with USDA to focus on the top research risk factors that we should be addressing through funding.

But without the necessary dollars to invest, we will not be able to follow through on all of the plans, the research bill, the efforts that have gone on in making food safety a priority. It happens if we make it a priority in terms of resources.

Again, I commend the committee, the subcommittee's work and ask that they continue to look for ways to add resources for a very, very critical issue for all of our families.

MODIFICATION TO AMENDMENT NO. 2 OFFERED
BY MR. BASS

Mr. BASS. Mr. Chairman, I ask unanimous consent to modify the Bass amendment No. 2 previously agreed to.

The CHAIRMAN pro tempore (Mr. BLUNT). The Clerk will report the request.

The Clerk read as follows:

Mr. BASS of New Hampshire asks unanimous consent that in subsection (a) of the Bass amendment to H.R. 4101, previously adopted, after the word "Program", insert the word "operations."

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Hampshire?

There was no objection.

Mr. BASS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, this is a technical correction that we have made to the amendment which the gentleman from Oregon (Mr. DEFAZIO) and I offered yesterday afternoon, which passed by a significant vote.

I just want to mention that since that time, many Members of Congress may have received calls from their State agriculture departments or their State aviation departments or their State fish and wildlife departments saying that in some form or fashion the Bass-DeFazio amendment would affect the funding for such programs as human health and crops and natural resources, forest and range and agriculture and so forth. That may have been the case had the unanimous consent that was just accepted not been accepted.

Unfortunately, legislative counsel made a minor drafting mistake which turned out to have a major impact on the interpretation of the amendment and now that this has been corrected, I want to assure my colleagues, each and every one of them, who have any concerns about the impact of this amendment that it will only affect the livestock protection matter which we debated yesterday.

□ 1545

I am not going to spend my time repeating the debate that we had yesterday only to point out that this is a very narrow program that affects a very few number of cattle and sheep ranchers in the West to eliminate predators at a significant cost to the Federal Government. We have been through these arguments yesterday.

I want to urge my colleagues, should there be a revote after we go out of the Committee of the Whole to support the amendment, it is the exact same vote that we had yesterday. This is an important amendment that is supported by a number of different environmental groups and taxpayers groups, including the League of Conservation Voters, the Sierra Club, Friends of the Earth, Taxpayers for Common Sense, Natural Resources Defense Council, Defenders of Wildlife, U.S. Public Interest Research Group, the Humane Society, and Wilderness Society.

Now that this amendment is corrected. I urge all of my colleagues, should we have another vote on it, to cast the same vote that they cast yesterday.

Mr. STENHOLM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am glad that my two colleagues had the opportunity to correct their amendment from yesterday that would have cut \$21 million or 53 percent of this program. We are now going to be discussing and revoting in the full House, the \$10 million cut,

which is 25 percent of the budget, of Wildlife Services.

In spite of the assurances of the gentleman from New Hampshire, each of my colleagues now have a letter from Secretary Glickman who is responsible for administering this program all over the United States, stating that it makes no difference whether it is \$10 million, a 25 percent cut, or \$21 million, a 53 percent cut, it will have a very devastating effect on other than non-lethal predator control. It is much more than that.

This is another example when Members attempt to do some very logical and, from their perspective, needed corrections to an agricultural appropriation bill. If you do not fully have knowledge of what is actually happening out in your various States, you will have unintended consequences.

Wildlife Services is a cooperative program where local entities partner with USDA and APHIS to jointly pay for wildlife management. Cooperating groups at the local level expend over, in some cases, more than 50 percent of the cost of these programs.

Slashing funding for Wildlife Services by 25 percent will result in across-the-board elimination of many important programs that protect human health. Much of this funding is also spent on efforts to develop nonlethal methods for livestock control.

Wildlife Services is much more than predator control. USDA's Wildlife Services Program provides critical assistance to public health and safety programs in every State. That is the reason why we have been hearing from our local States.

People are concerned because this is a program in which they multiply these dollars for local concern. The program provides help at more than 340 airports to prevent flocks of birds from interfering with passenger aircraft flights. That is serious.

It controls the spread of rabies in the North, East, Midwest, and the South. We have a very successful program going in all of these regions using bait in order to control rabies; coyote bait. It is a successful program.

We cannot have this amendment pass and continue that program, because the people that administer it have other duties. When we start making a 25 percent cut in a budget that is already as lean as the agricultural budget is, we will have additional non-intended consequences.

This program controls damage to fruit crops, grain, and fish farms by migratory birds such as blackbirds, saving American farmers hundreds of millions of dollars. It conducts research on humane control of animal populations that spread diseases, such as deer and rats.

It works to protect endangered species such as the Louisiana black bear and the Aleutian Canada goose, and I can go on and on.

The important thing for my colleagues to understand when we do

revote this, this is not a program that can afford a 25 percent cut. The intention of the gentleman from new Hampshire and the gentleman from Oregon are really good. But it will have the unintended consequences.

I hope when we revote this in the full House that my colleagues will overwhelmingly vote no and look to another date in order to accomplish the goal which these two people are proposing with their amendment time.

Mr. SKEEN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, this was a bad amendment yesterday, and the new version is not much better. I appreciate what the

two gentlemen are doing or trying to do, but I do not think they have a real grasp of exactly what the consequences are of what they are asking us to do.

I do have a letter from Secretary Glickman saying cutting Wildlife Services is wrong, whether the cut is yesterday's \$21 million or today's \$10 million. This is not about endangered species. This is about a severe cut to a program that provides essential public health and safety services to every State in the Union and Puerto Rico, Guam, and the Virgin Islands.

Many of the Members who voted for yesterday's amendment wrote to me, asking for Wildlife Services Programs

at the same or increased level. This is just not possible with these proposed cuts.

If you want rabies control, programs to protect commercial aircraft from flocks of birds at 360 airports throughout the country, protection of grain and fruit crops from migratory birds, research into disease-carrying animals such as rats and deer to continue, and many other important programs, you must vote no on this amendment.

At this point I would like to include tables that reflect the bill as reported by the Committee.

**AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS BILL, 1999 (H.R. 4101)**

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
TITLE I - AGRICULTURAL PROGRAMS					
Production, Processing, and Marketing					
Office of the Secretary	3,379,000	2,941,000	2,941,000	-438,000	.....
Executive Operations:					
Chief Economist	5,048,000	5,823,000	5,973,000	+925,000	+150,000
Commission on 21st Century Production Agriculture.....		350,000			-350,000
National Appeals Division.....	11,718,000	13,287,000	12,204,000	+486,000	-1,083,000
Office of Budget and Program Analysis.....	5,986,000	6,045,000	6,120,000	+134,000	+75,000
Office of the Chief Information Officer.....	4,773,000	7,222,000	5,551,000	+778,000	-1,671,000
Total, Executive Operations.....	27,525,000	32,737,000	28,848,000	+2,323,000	-2,889,000
Office of the Chief Financial Officer.....	4,283,000	4,582,000	4,283,000		-279,000
Office of the Assistant Secretary for Administration	613,000	636,000	636,000	+23,000	.....
Agriculture buildings and facilities and rental payments.....	131,085,000	155,689,000	155,689,000	+24,604,000	.....
Payments to GSA.....	(98,600,000)	(108,057,000)	(108,057,000)	(+9,457,000)	.....
Building operations and maintenance	(24,785,000)	(24,127,000)	(24,127,000)	(-658,000)	.....
Repairs, renovations, and construction.....	(5,000,000)	(23,505,000)	(23,505,000)	(+18,505,000)	.....
Relocation expenses	(2,700,000)			(-2,700,000)	.....
Hazardous waste management.....	15,700,000	15,700,000	15,700,000		.....
Departmental administration.....	29,231,000	32,188,000	32,188,000	+2,937,000	.....
Outreach for socially disadvantaged farmers.....	3,000,000	10,000,000	3,000,000		-7,000,000
Office of the Assistant Secretary for Congressional Relations.....	3,688,000	3,814,000	3,688,000		-146,000
Office of Communications.....	8,138,000	8,319,000	8,138,000		-181,000
Office of the Inspector General.....	63,128,000	87,689,000	67,178,000	+4,050,000	-20,511,000
Office of the General Counsel.....	28,759,000	30,446,000	30,396,000	+1,637,000	-50,000
Office of the Under Secretary for Research, Education and Economics.....	540,000	560,000	560,000	+20,000	.....
Economic Research Service.....	71,604,000	55,839,000	87,282,000	-4,322,000	+11,443,000
National Agricultural Statistics Service	118,048,000	107,190,000	105,082,000	-12,966,000	-2,108,000
Census of Agriculture	(36,327,000)	(23,741,000)	(23,141,000)	(-13,186,000)	(-600,000)
Agricultural Research Service.....	744,382,000	776,828,000	755,816,000	+11,434,000	-21,012,000
Buildings and facilities.....	80,630,000	35,900,000	81,380,000	-19,250,000	+25,480,000
Total, Agricultural Research Service.....	825,012,000	812,728,000	817,196,000	-7,816,000	+4,468,000
Cooperative State Research, Education, and Extension Service:					
Research and education activities.....	431,410,000	412,589,000	431,125,000	-285,000	+18,536,000
Native American Institutions Endowment Fund	(4,600,000)	(4,600,000)	(4,600,000)		
Extension activities.....	423,376,000	418,651,000	416,789,000	-6,587,000	-1,862,000
Total, Cooperative State Research, Education, and Extension Service.....	854,786,000	831,240,000	847,914,000	-8,872,000	+16,874,000
Office of the Assistant Secretary for Marketing and Regulatory Programs.....	618,000	642,000	642,000	+24,000	.....
Animal and Plant Health Inspection Service:					
Salaries and expenses.....	425,932,000	417,752,000	424,500,000	-1,432,000	+6,748,000
AQI user fees.....	(88,000,000)	(100,000,000)	(88,000,000)		(-12,000,000)
Buildings and facilities.....	4,200,000	5,200,000	5,200,000	+1,000,000	.....
Total, Animal and Plant Health Inspection Service	430,132,000	422,952,000	429,700,000	-432,000	+6,748,000
Agricultural Marketing Service:					
Marketing Services.....	46,567,000	58,469,000	46,567,000		-11,902,000
New user fees.....	(4,000,000)	(4,000,000)	(4,000,000)		
(Limitation on administrative expenses, from fees collected).....	(59,521,000)	(60,730,000)	(60,730,000)	(+1,209,000)	.....
Funds for strengthening markets, income, and supply (transfer from section 32).....	10,690,000	10,998,000	10,998,000	+308,000	.....
Payments to states and possessions	1,200,000	1,200,000	1,200,000		.....
Total, Agricultural Marketing Service	58,457,000	70,667,000	58,765,000	+308,000	-11,902,000
Grain Inspection, Packers and Stockyards Administration	25,390,000	11,797,000	29,042,000	+3,652,000	+17,245,000
Inspection and Weighing Services (limitation on administrative expenses, from fees collected).....	(43,092,000)	(42,557,000)	(42,557,000)	(-535,000)	.....
Office of the Under Secretary for Food Safety	446,000	598,000		-446,000	-598,000
Food Safety and Inspection Service.....	588,761,000	149,566,000	609,250,000	+20,489,000	+459,684,000
Lab accreditation fees 1/.....	(1,000,000)	(1,000,000)	(1,000,000)		.....
Total, Production, Processing, and Marketing	3,292,303,000	2,848,480,000	3,319,078,000	+26,775,000	+470,598,000
Office of the Under Secretary for Farm and Foreign Agricultural Services.....	572,000	597,000	597,000	+25,000	.....
Farm Service Agency:					
Salaries and expenses.....	699,579,000	723,478,000	724,499,000	+24,920,000	+1,021,000
(Transfer from export loans)	(589,000)	(672,000)	(589,000)		(-83,000)
(Transfer from P.L. 480)	(815,000)	(845,000)	(815,000)		(-30,000)
(Transfer from ACIF).....	(209,861,000)	(227,673,000)	(209,861,000)		(-17,812,000)
Total, salaries and expenses	(910,844,000)	(952,668,000)	(935,764,000)	(+24,920,000)	(-16,904,000)

**AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS BILL, 1999 (H.R. 4101)—Continued**

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
State mediation grants.....	2,000,000	4,000,000	2,000,000	.....	-2,000,000
Dairy indemnity program.....	550,000	450,000	450,000	-100,000	.....
Total, Farm Service Agency.....	702,129,000	727,928,000	726,949,000	+24,820,000	-979,000
Agricultural Credit Insurance Fund Program Account:					
Loan authorizations:					
Farm ownership loans:					
Direct.....	(78,320,000)	(85,000,000)	(75,000,000)	(-3,320,000)	(-10,000,000)
Guaranteed.....	(425,000,000)	(425,031,000)	(425,031,000)	(+31,000)	.....
Subtotal.....	(503,320,000)	(510,031,000)	(500,031,000)	(-3,289,000)	(-10,000,000)
Farm operating loans:					
Direct.....	(565,000,000)	(500,000,000)	(500,000,000)	(-65,000,000)	.....
Guaranteed unsubsidized.....	(992,906,000)	(1,700,000,000)	(1,276,000,000)	(+283,094,000)	(-424,000,000)
Guaranteed subsidized.....	(235,000,000)	(200,000,000)	(200,000,000)	(-35,000,000)	.....
Subtotal.....	(1,792,906,000)	(2,400,000,000)	(1,976,000,000)	(+183,094,000)	(-424,000,000)
Indian tribe land acquisition loans.....	(1,000,000)	(1,003,000)	(1,000,000)	.....	(-3,000)
Emergency disaster loans.....	(25,000,000)	(25,000,000)	(25,000,000)	.....	.....
Boll weevil eradication loans.....	(53,467,000)	(30,000,000)	(100,000,000)	(+46,533,000)	(+70,000,000)
Credit sales of acquired property.....	(25,000,000)	(25,000,000)	(25,000,000)	.....	.....
Total, Loan authorizations.....	(2,400,693,000)	(2,991,034,000)	(2,627,031,000)	(+226,338,000)	(-364,003,000)
Loan subsidies:					
Farm ownership loans:					
Direct.....	8,329,000	12,725,000	11,228,000	+2,899,000	-1,497,000
Guaranteed.....	16,407,000	6,758,000	6,758,000	-9,649,000	.....
Subtotal.....	24,736,000	19,483,000	17,986,000	-6,750,000	-1,497,000
Farm operating loans:					
Direct.....	36,823,000	34,150,000	34,150,000	-2,673,000	.....
Guaranteed unsubsidized.....	11,617,000	19,720,000	11,000,000	-617,000	-8,720,000
Guaranteed subsidized.....	22,654,000	17,480,000	17,480,000	-5,174,000	.....
Subtotal.....	71,094,000	71,350,000	62,630,000	-8,464,000	-8,720,000
Indian tribe land acquisition.....	132,000	153,000	153,000	+21,000	.....
Emergency disaster loans.....	6,008,000	5,900,000	5,900,000	-108,000	.....
Boll weevil loans subsidy.....	472,000	432,000	1,440,000	+968,000	+1,008,000
Credit sales of acquired property.....	3,255,000	3,260,000	3,260,000	+5,000	.....
Total, Loan subsidies.....	105,697,000	100,578,000	91,369,000	-14,328,000	-9,209,000
ACIF expenses:					
Salaries and expense (transfer to FSA).....	209,861,000	227,673,000	209,861,000	.....	-17,812,000
Administrative expenses.....	10,000,000	10,000,000	10,000,000	.....	.....
Total, ACIF expenses.....	219,861,000	237,673,000	219,861,000	.....	-17,812,000
Total, Agricultural Credit Insurance Fund.....	325,558,000	338,251,000	311,230,000	-14,328,000	-27,021,000
(Loan authorization).....	(2,400,693,000)	(2,991,034,000)	(2,627,031,000)	(+226,338,000)	(-364,003,000)
Total, Farm Service Agency.....	1,027,687,000	1,066,179,000	1,038,179,000	+10,492,000	-28,000,000
Risk Management Agency:					
Administrative and operating expenses.....	64,000,000	66,000,000	64,000,000	.....	-2,000,000
Sales commission of agents.....	188,571,000	.....	.....	-188,571,000	.....
Total, Risk Management Agency.....	252,571,000	66,000,000	64,000,000	-188,571,000	-2,000,000
Total, Farm Assistance Programs.....	1,280,830,000	1,132,776,000	1,102,776,000	-178,054,000	-30,000,000
Corporations					
Federal Crop Insurance Corporation:					
Federal crop insurance corporation fund.....	1,584,135,000	1,504,036,000	1,504,036,000	-80,099,000	.....
Commodity Credit Corporation Fund:					
Reimbursement for net realized losses.....	783,507,000	8,439,000,000	8,439,000,000	+7,655,493,000	.....
Operations and maintenance for hazardous waste management (limitation on administrative expenses).....	(5,000,000)	(5,000,000)	(5,000,000)	.....	.....
Total, Corporations.....	2,367,642,000	9,943,036,000	9,943,036,000	+7,575,394,000	.....
Total, title I, Agricultural Programs.....	6,940,775,000	13,924,292,000	14,364,890,000	+7,424,115,000	+440,598,000
(By transfer).....	(211,265,000)	(229,190,000)	(211,265,000)	.....	(-17,925,000)
(Loan authorization).....	(2,400,693,000)	(2,991,034,000)	(2,627,031,000)	(+226,338,000)	(-364,003,000)
(Limitation on administrative expenses).....	(107,813,000)	(108,287,000)	(108,287,000)	(+674,000)	.....

**AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS BILL, 1999 (H.R. 4101)—Continued**

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
TITLE II - CONSERVATION PROGRAMS					
Office of the Under Secretary for Natural Resources and Environment	693,000	719,000	719,000	+26,000	.....
Natural Resources Conservation Service:					
Conservation operations.....	632,853,000	742,231,000	641,243,000	+8,390,000	-100,988,000
Watershed surveys and planning 2/	11,190,000	.....	9,545,000	-1,645,000	+9,545,000
Watershed and flood prevention operations 3/	101,036,000	49,000,000	97,850,000	-3,186,000	+48,850,000
Resource conservation and development.....	34,377,000	34,377,000	35,000,000	+623,000	+623,000
Forestry incentives program	6,325,000	.....	.....	-6,325,000	.....
Total, Natural Resources Conservation Service	785,781,000	825,608,000	783,638,000	-2,143,000	-41,970,000
Total, title II, Conservation Programs.....	786,474,000	826,327,000	784,357,000	-2,117,000	-41,970,000
TITLE III - RURAL ECONOMIC AND COMMUNITY DEVELOPMENT PROGRAMS					
Office of the Under Secretary for Rural Development.....	588,000	611,000	611,000	+23,000	.....
Rural community advancement program.....	652,197,000	715,172,000	745,172,000	+92,975,000	+30,000,000
Delta region economic development program .....	.....	26,000,000	.....	.....	-26,000,000
Rural Housing Service:					
Rural Housing Insurance Fund Program Account:					
Loan authorizations:					
Single family (sec. 502)	(1,000,000,000)	(1,000,000,000)	(930,600,000)	(-69,400,000)	(-69,400,000)
Unsubsidized guaranteed	(3,000,000,000)	(3,000,000,000)	(3,000,000,000)	.....	.....
Housing repair (sec. 504)	(30,000,000)	(25,001,000)	(25,001,000)	(-4,999,000)	.....
Farm labor (sec. 514)	(15,000,000)	(32,108,000)	(20,000,000)	(+5,000,000)	(-12,108,000)
Rental housing (sec. 515)	(128,640,000)	(100,000,000)	(100,000,000)	(-28,640,000)	.....
Multifamily housing guarantees (sec. 538)	(19,700,000)	(150,000,000)	(125,000,000)	(+105,300,000)	(-25,000,000)
Site loans (sec. 524)	(600,000)	(5,000,000)	(5,000,000)	(+4,400,000)	.....
Credit sales of acquired property	(25,000,000)	(30,007,000)	(25,000,000)	.....	(-5,007,000)
Self-help housing land development fund.....	(587,000)	(5,000,000)	(5,000,000)	(+4,413,000)	.....
Total, Loan authorizations	(4,219,527,000)	(4,347,116,000)	(4,235,601,000)	(+16,074,000)	(-111,515,000)
Loan subsidies:					
Single family (sec. 502)	128,100,000	118,200,000	110,000,000	-18,100,000	-8,200,000
Unsubsidized guaranteed	6,900,000	2,700,000	2,700,000	-4,200,000	.....
Housing repair (sec. 504)	10,300,000	8,808,000	8,808,000	-1,492,000	.....
Multifamily housing guarantees (sec. 538)	1,200,000	3,480,000	2,900,000	+1,700,000	-580,000
Farm labor (sec. 514)	7,388,000	16,706,000	10,406,000	+3,018,000	-8,300,000
Rental housing (sec. 515)	68,745,000	48,250,000	48,250,000	-20,495,000	.....
Site loans (sec. 524) .....	.....	17,000	17,000	+17,000	.....
Credit sales of acquired property	3,492,000	4,672,000	3,492,000	.....	-1,180,000
Self-help housing land development fund.....	17,000	282,000	282,000	+265,000	.....
Total, Loan subsidies.....	226,142,000	203,115,000	186,855,000	-39,287,000	-16,260,000
RHIF administrative expenses (transfer to RHS)	354,785,000	367,857,000	354,785,000	.....	-13,072,000
Rental assistance program:					
(Sec. 521)	535,497,000	577,497,000	577,497,000	+42,000,000	.....
(Sec. 502(c)(5)(D)).....	5,900,000	5,900,000	5,900,000	.....	.....
Total, Rental assistance program	541,397,000	583,397,000	583,397,000	+42,000,000	.....
Total, Rural Housing Insurance Fund	1,122,324,000	1,154,369,000	1,125,037,000	+2,713,000	-29,332,000
(Loan authorization).....	(4,219,527,000)	(4,347,116,000)	(4,235,601,000)	(+16,074,000)	(-111,515,000)
Mutual and self-help housing grants.....	26,000,000	26,000,000	26,000,000	.....	.....
Rural community fire protection grants.....	2,000,000	.....	.....	-2,000,000	.....
Rural housing assistance grants	45,720,000	46,900,000	41,000,000	-4,720,000	-5,900,000
Subtotal, grants and payments	73,720,000	72,900,000	67,000,000	-6,720,000	-5,900,000
RHS expenses:					
Salaries and expenses.....	57,958,000	60,978,000	57,958,000	.....	-3,020,000
(Transfer from RHIF)	(354,785,000)	(367,857,000)	(354,785,000)	.....	(-13,072,000)
Total, RHS expenses	(412,743,000)	(428,835,000)	(412,743,000)	.....	(-16,092,000)
Total, Rural Housing Service	1,254,002,000	1,288,247,000	1,249,995,000	-4,007,000	-38,252,000
(Loan authorization).....	(4,219,527,000)	(4,347,116,000)	(4,235,601,000)	(+16,074,000)	(-111,515,000)
Rural Business-Cooperative Service:					
Rural Development Loan Fund Program Account:					
(Loan authorization).....	(35,000,000)	(35,000,000)	(35,000,000)	.....	.....
Loan subsidy.....	16,888,000	17,622,000	17,622,000	+734,000	.....
Administrative expenses (transfer to RBCS).....	3,482,000	3,547,000	3,499,000	+17,000	-48,000
Total, Rural Development Loan Fund	20,370,000	21,169,000	21,121,000	+751,000	-48,000

**AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS BILL, 1999 (H.R. 4101)—Continued**

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
Rural Economic Development Loans Program Account:					
(Loan authorization).....	(25,000,000)	(15,000,000)	(15,000,000)	(-10,000,000)	.....
Direct subsidy	5,978,000	3,783,000	3,783,000	-2,195,000	.....
Alternative Agricultural Research and Commercialization					
Revolving Fund.....	7,000,000	10,000,000	.....	-7,000,000	-10,000,000
Rural cooperative development grants.....	3,000,000	5,700,000	3,300,000	+300,000	-2,400,000
RBCS expenses:					
Salaries and expenses.....	25,880,000	26,398,000	25,880,000	.....	-716,000
(Transfer from RDLFP).....	(3,482,000)	(3,547,000)	(3,499,000)	(+17,000)	(-48,000)
Total, RBCS expenses	(29,162,000)	(29,843,000)	(29,179,000)	(+17,000)	(-764,000)
Total, Rural Business-Cooperative Service.....	62,028,000	67,048,000	53,884,000	-8,144,000	-13,164,000
(By transfer).....	(3,482,000)	(3,547,000)	(3,499,000)	(+17,000)	(-48,000)
(Loan authorization).....	(60,000,000)	(50,000,000)	(50,000,000)	(-10,000,000)	.....
Rural Utilities Service:					
Rural Electrification and Telecommunications Loans Program Account:					
Loan authorizations:					
Direct loans:					
Electric 5%	(125,000,000)	(55,000,000)	(71,500,000)	(-53,500,000)	(+16,500,000)
Telecommunications 5%	(75,000,000)	(50,000,000)	(75,000,000)	.....	(+25,000,000)
Subtotal.....	(200,000,000)	(105,000,000)	(146,500,000)	(-53,500,000)	(+41,500,000)
Treasury rates: Telecommunications	(300,000,000)	(300,000,000)	(300,000,000)	.....	.....
Muni-rate: Electric.....	(500,000,000)	(250,000,000)	(295,000,000)	(-205,000,000)	(+45,000,000)
FFB loans:					
Electric, regular.....	(300,000,000)	(300,000,000)	(700,000,000)	(+400,000,000)	(+400,000,000)
Telecommunications	(120,000,000)	(120,000,000)	(120,000,000)	.....	.....
Subtotal.....	(420,000,000)	(420,000,000)	(820,000,000)	(+400,000,000)	(+400,000,000)
Total, Loan authorizations	(1,420,000,000)	(1,075,000,000)	(1,561,500,000)	(+141,500,000)	(+486,500,000)
Loan subsidies:					
Direct loans:					
Electric 5%	9,325,000	7,172,000	9,325,000	.....	+2,153,000
Telecommunications 5%	2,940,000	4,895,000	7,342,000	+4,402,000	+2,447,000
Subtotal.....	12,265,000	12,067,000	16,667,000	+4,402,000	+4,600,000
Treasury rates: Telecommunications	60,000	810,000	810,000	+750,000	.....
Muni-rate: Electric.....	21,100,000	21,900,000	25,842,000	+4,742,000	+3,942,000
FFB loans: Electric, regular	2,760,000	.....	.....	-2,760,000	.....
Total, Loan subsidies.....	36,185,000	34,777,000	43,319,000	+7,134,000	+8,542,000
RETLP administrative expenses (transfer to RUS).....	29,982,000	32,000,000	29,982,000	.....	-2,018,000
Total, Rural Electrification and Telecommunications Loans Program Account.....	66,167,000	66,777,000	73,301,000	+7,134,000	+6,524,000
(Loan authorization).....	(1,420,000,000)	(1,075,000,000)	(1,561,500,000)	(+141,500,000)	(+486,500,000)
Rural Telephone Bank Program Account:					
(Loan authorization).....	(175,000,000)	(175,000,000)	(175,000,000)	.....	.....
Direct loan subsidy	3,710,000	4,638,000	4,638,000	+928,000	.....
RTP administrative expenses (transfer to RUS).....	3,000,000	3,000,000	3,000,000	.....	.....
Total	6,710,000	7,638,000	7,638,000	+928,000	.....
Distance learning and telemedicine program:					
(Loan authorization).....	(150,000,000)	(150,000,000)	(150,000,000)	.....	.....
Direct loan subsidy	30,000	180,000	180,000	+150,000	.....
Grants.....	12,500,000	15,000,000	10,000,000	-2,500,000	-5,000,000
Total	12,530,000	15,180,000	10,180,000	-2,350,000	-5,000,000
RUS expenses:					
Salaries and expenses.....	33,000,000	33,445,000	33,000,000	.....	-445,000
(Transfer from RETLP).....	(29,982,000)	(32,000,000)	(29,982,000)	.....	(-2,018,000)
(Transfer from RTP).....	(3,000,000)	(3,000,000)	(3,000,000)	.....	.....
Total, RUS expenses	(65,982,000)	(68,445,000)	(65,982,000)	.....	(-2,463,000)
Total, Rural Utilities Service	118,407,000	123,040,000	124,119,000	+5,712,000	+1,079,000
(By transfer).....	(32,982,000)	(35,000,000)	(32,982,000)	.....	(-2,018,000)
(Loan authorization).....	(1,745,000,000)	(1,400,000,000)	(1,886,500,000)	(+141,500,000)	(+486,500,000)

**AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS BILL, 1999 (H.R. 4101)—Continued**

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
Total, title III, Rural Economic and Community Development Programs.....	2,087,222,000	2,220,118,000	2,173,781,000	+86,559,000	-46,337,000
(By transfer).....	(391,249,000)	(406,404,000)	(391,266,000)	(+17,000)	(-15,138,000)
(Loan authorization).....	(6,024,527,000)	(5,797,116,000)	(6,172,101,000)	(+147,574,000)	(+374,985,000)
TITLE IV - DOMESTIC FOOD PROGRAMS					
Office of the Under Secretary for Food, Nutrition and Consumer Services.....	554,000	573,000		-554,000	-573,000
Food and Consumer Service:					
Child nutrition programs.....	2,612,675,000	3,887,703,000	4,166,747,000	+1,554,072,000	+279,044,000
Discretionary spending.....	3,750,000	10,000,000	3,750,000		-6,250,000
Transfer from section 32.....	5,151,391,000	5,332,194,000	5,048,150,000	-103,241,000	-284,044,000
Total, Child nutrition programs.....	7,767,816,000	9,229,897,000	9,218,647,000	+1,450,831,000	-11,250,000
Special supplemental nutrition program for women, infants, and children (WIC).....	3,924,000,000	4,081,000,000	3,924,000,000		-157,000,000
Reserve.....		(20,000,000)			(-20,000,000)
Food stamp program:					
Expenses.....	23,736,479,000	22,365,806,000	21,165,806,000	-2,570,673,000	-1,200,000,000
Reserve.....	100,000,000	1,000,000,000	100,000,000		-900,000,000
Nutrition assistance for Puerto Rico.....	1,204,000,000	1,236,000,000	1,236,000,000	+32,000,000	
The emergency food assistance program.....	100,000,000	100,000,000	90,000,000	-10,000,000	-10,000,000
Total, Food stamp program.....	25,140,479,000	24,701,806,000	22,591,806,000	-2,548,673,000	-2,110,000,000
Commodity assistance program.....	141,000,000	317,081,000	131,000,000	-10,000,000	-186,081,000
Food donations programs for selected groups:					
Needy family program.....	1,165,000		1,081,000	-84,000	+1,081,000
Elderly feeding program.....	140,000,000		140,000,000		+140,000,000
Total, Food donations programs 4/.....	141,165,000		141,081,000	-84,000	+141,081,000
Food program administration.....	107,505,000	111,848,000	108,311,000	+806,000	-3,537,000
Total, Food and Consumer Service.....	37,221,965,000	38,441,632,000	36,114,845,000	-1,107,120,000	-2,326,787,000
Total, title IV, Domestic Food Programs.....	37,222,519,000	38,442,205,000	36,114,845,000	-1,107,674,000	-2,327,360,000
TITLE V - FOREIGN ASSISTANCE AND RELATED PROGRAMS					
Foreign Agricultural Service and General Sales Manager:					
Direct appropriation.....	131,295,000	141,087,000	131,295,000		-9,792,000
(Transfer from export loans).....	(3,231,000)	(3,413,000)	(3,231,000)		(-182,000)
(Transfer from P.L. 480).....	(1,035,000)	(1,093,000)	(1,035,000)		(-58,000)
Total, Program level.....	(135,561,000)	(145,583,000)	(135,561,000)		(-10,032,000)
Public Law 480 Program and Grant Accounts:					
Title I - Credit sales:					
Program level.....	(244,508,000)	(111,558,000)	(197,514,000)	(-46,994,000)	(+85,956,000)
Direct loans.....	(226,900,000)	(102,163,000)	(182,624,000)	(-44,276,000)	(+80,461,000)
Ocean freight differential.....	17,606,000	9,385,000	14,890,000	-2,718,000	+5,495,000
Title II - Commodities for disposition abroad:					
Program level.....	(837,000,000)	(837,000,000)	(837,000,000)		
Appropriation.....	837,000,000	837,000,000	837,000,000		
Title III - Commodity grants:					
Program level.....	(30,000,000)	(30,000,000)	(25,000,000)	(-5,000,000)	(-5,000,000)
Appropriation.....	30,000,000	30,000,000	25,000,000	-5,000,000	-5,000,000
Loan subsidies.....	178,596,000	88,667,000	158,499,000	-18,097,000	+68,832,000
Salaries and expenses:					
General Sales Manager (transfer to FAS).....	1,035,000	1,093,000	1,035,000		-58,000
Farm Service Agency (transfer to FSA).....	815,000	845,000	815,000		-30,000
Subtotal.....	1,850,000	1,938,000	1,850,000		-88,000
Total, Public Law 480:					
Program level.....	(1,111,508,000)	(978,558,000)	(1,059,514,000)	(-51,994,000)	(+80,956,000)
Appropriation.....	1,063,054,000	967,000,000	1,037,239,000	-25,815,000	+70,239,000
CCC Export Loans Program Account:					
Export credit: Loan subsidy.....	407,630,000	253,000,000	252,500,000	-155,130,000	-500,000
(Loan authorization).....	(5,500,000,000)	(4,615,000,000)	(4,615,000,000)	(-885,000,000)	
Emerging markets export credit.....	(200,000,000)			(-200,000,000)	
Salaries and expenses (Export Loans):					
General Sales Manager (transfer to FAS).....	3,231,000	3,413,000	3,231,000		-182,000
Farm Service Agency (transfer to FSA).....	589,000	672,000	589,000		-83,000
Total, CCC Export Loans Program Account.....	411,450,000	257,085,000	256,320,000	-155,130,000	-765,000
Total, title V, Foreign Assistance and Related Programs.....	1,605,799,000	1,365,172,000	1,424,854,000	-180,945,000	+59,682,000
(By transfer).....	(4,266,000)	(4,506,000)	(4,266,000)		(-240,000)

**AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS BILL, 1999 (H.R. 4101)—Continued**

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
TITLE VI - RELATED AGENCIES AND FOOD AND DRUG ADMINISTRATION					
DEPARTMENT OF HEALTH AND HUMAN SERVICES					
Food and Drug Administration					
Salaries and expenses, direct appropriation.....	857,501,000	878,884,000	871,499,000	+ 13,998,000	-7,385,000
Prescription drug user fee act.....	(117,122,000)	(126,845,000)	(126,845,000)	(+ 9,723,000)	
Mammography clinics user fee.....	(13,966,000)	(14,385,000)	(14,385,000)	(+ 419,000)	
Subtotal, program level.....	(988,589,000)	(1,020,114,000)	(1,012,729,000)	(+ 24,140,000)	(-7,385,000)
Buildings and facilities.....	21,350,000	8,350,000	11,350,000	-10,000,000	+ 3,000,000
Rental payments (FDA).....	46,294,000	82,866,000	82,866,000	+ 36,572,000	
By transfer from PDUFA.....		(5,428,000)	(5,428,000)	(+ 5,428,000)	
Subtotal, program level.....	(46,294,000)	(88,294,000)	(88,294,000)	(+ 42,000,000)	
Total, Food and Drug Administration.....	925,145,000	970,100,000	965,715,000	+ 40,570,000	-4,385,000
DEPARTMENT OF THE TREASURY					
Financial Management Service: Payments to the Farm Credit System Financial Assistance Corporation.....	7,728,000	2,565,000	2,565,000	-5,163,000	
INDEPENDENT AGENCIES					
Commodity Futures Trading Commission.....	58,101,000	63,360,000	62,140,000	+ 4,039,000	-1,220,000
Farm Credit Administration (limitation on administrative expenses).....	(34,423,000)	(35,800,000)	(35,800,000)	(+ 1,377,000)	
Total, title VI, Related Agencies and Food and Drug Administration.....	990,974,000	1,036,025,000	1,030,420,000	+ 39,446,000	-5,605,000
TITLE VII - EMERGENCY APPROPRIATIONS					
DEPARTMENT OF AGRICULTURE					
Farm Service Agency					
Emergency conservation program.....	34,000,000			-34,000,000	
Tree assistance program.....	14,000,000			-14,000,000	
Agricultural Credit Insurance Fund Program Account: Emergency insured loans:					
Loan subsidy.....	21,000,000			-21,000,000	
(Loan authorization).....	87,400,000			-87,400,000	
Total, Farm Service Agency.....	69,000,000			-69,000,000	
Commodity Credit Corporation					
Livestock disaster assistance fund.....	4,000,000			-4,000,000	
Dairy production indemnity assistance program.....	6,800,000			-6,800,000	
Total, Commodity Credit Corporation.....	10,800,000			-10,800,000	
Natural Resources Conservation Service					
Watershed and flood prevention operations.....	80,000,000			-80,000,000	
Total, title VII, Emergency appropriations.....	159,800,000			-159,800,000	
Grand total:					
New budget (obligational) authority.....	49,783,563,000	57,814,139,000	55,893,147,000	+ 6,099,584,000	-1,920,992,000
Appropriations.....	(49,633,763,000)	(57,814,139,000)	(55,893,147,000)	(+ 6,258,384,000)	(-1,820,992,000)
Emergency appropriations.....	(159,800,000)			(-159,800,000)	
(By transfer).....	(806,780,000)	(840,100,000)	(806,797,000)	(+ 17,000)	(-33,303,000)
(Loan authorization).....	(14,012,620,000)	(13,403,150,000)	(13,414,132,000)	(-598,488,000)	(+ 10,982,000)
(Limitation on administrative expenses).....	(142,036,000)	(144,087,000)	(144,087,000)	(+ 2,051,000)	
RECAPITULATION					
Title I - Agricultural programs.....	6,840,775,000	13,924,292,000	14,364,890,000	+ 7,424,115,000	+ 440,598,000
Title II - Conservation programs.....	786,474,000	826,327,000	784,357,000	-2,117,000	-41,970,000
Title III - Rural economic and community development programs....	2,087,222,000	2,220,118,000	2,173,781,000	+ 86,559,000	-48,337,000
Title IV - Domestic food programs.....	37,222,519,000	38,442,205,000	36,114,845,000	-1,107,674,000	-2,327,360,000
Title V - Foreign assistance and related programs.....	1,605,799,000	1,365,172,000	1,424,854,000	-180,945,000	+ 59,682,000
Title VI - Related agencies and Food and Drug Administration.....	990,974,000	1,036,025,000	1,030,420,000	+ 39,446,000	-5,605,000
Title VII - Emergency appropriations.....	159,800,000			-159,800,000	
Total, new budget (obligational) authority.....	49,783,563,000	57,814,139,000	55,893,147,000	+ 6,099,584,000	-1,920,992,000

1/ In addition to appropriation.
 2/ Budget proposes to fund this account under Conservation Operations.
 3/ Budget proposes to fund technical assistance for WFPO under Conservation Operations.
 4/ Budget proposes to include funding for these programs under the Commodity Assistance Program in FY 1998.

Mr. DEUTSCH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, today I rise to support the Bass-DeFazio amendment to H.R. 4101, a bipartisan amendment to eliminate wasteful spending and to protect wildlife and the environment.

This amendment makes a surgical cut from the operations of the Wildlife Services, known to many of us for years as the Animal Damage Control Program. Mr. Chairman, this is a program that the public holds in poor regard, because it reflects a callous attitude toward wildlife and the environment and amounts to corporate welfare in the West.

For decades, Wildlife Services and Animal Damage Control have taken a jaundiced view toward wildlife problems, relying on quick-fix lethal control strategies rather than lasting solutions. They have measured their success in terms of the number of animals killed rather than the amount of livestock damage mitigated.

Indeed, Mr. Chairman, the Los Angeles Times reported on September 9, 1997 "Each cycle of control only seems to beget more coyotes. They have been shot at, trapped, snared, clubbed, strangled by the millions. The Federal Government alone dispatched 82,261 coyotes last year, more than 638,000 since 1980. Yet, in the 100 years since livestock owners began the coyote war in the West, the resourceful predator has far surpassed the wolf, the grizzly, and the cougar, tripling its numbers and its range."

We are not winning the war against the coyote. We are wasting dollars in a futile exercise, a lethal control treadmill that leads us nowhere.

Indeed, ranchers need to protect their livestock, their investment. During the last two decades, there have been a variety of practical and effective nonlethal husbandry techniques developed and put into practical use: the use of guard animals, such as dogs, donkeys or llamas; the use of electronic sound and light devices; predator exclusion fencing; shed lambing; and night penning.

By deploying these techniques, ranchers can minimize the need for lethal responses to predators. An ounce of prevention is worth a pound of cure.

What we are advocating in supporting the Bass-DeFazio amendment is practical and workable. In fact, there is an excellent working model in the State of Kansas which has virtually no Animal Damage Control money or staff.

Instead the State Extension Service has worked with ranchers and other resource users and taught them how to deter coyote problems and how to selectively eliminate problem animals.

Kansas has spent less than \$75,000 of Federal dollars in 27 years, while all other States in the West spent 8 to 50 times more. Take the case of Oklahoma which spent \$1.3 million a year and maintained 28 damage control staff. In spite of the increase in spend-

ing labor, the reported wildlife problems are 20 times greater than in Kansas.

Mr. Chairman, there is a better way. The DeFazio-Bass amendment leads us in the right direction by reducing the full of dollars invested in failed and fruitless lethal predator control strategies.

I urge my colleagues to join with taxpayer defense groups and environmental and humane groups in supporting this sensible amendment to bring sanity to this program.

Ms. KAPTUR. Mr. Chairman, I move to strike the last word.

Mr. Chairman, there is no Member of this House that I have more respect for than my colleague, the gentleman from Oregon (Mr. DEFazio). I congratulate his efforts along with the gentleman from New Hampshire (Mr. BASS) to try to bring some additional attention in this particular program to some of the difficulties with lethal control methods that are used across this country on certain species.

However, I rise to oppose this particular amendment, as did I yesterday, because I really think that it may have consequences that the authors might not yet have anticipated.

First of all, there is a severe problem in this country with damage created by wildlife. It is not just in rural areas. We have lots of Members here, including myself, who represent major metropolitan airports where bird control is a very serious human life when people go into flight. In fact, a third of this particular appropriation is spent by that type of control around the country at these various facilities.

In fact, the Federal Aviation Administration admits that about \$1 billion of all of the wildlife damage across this country relates to birds in flight close to airports. They do not really follow the human sonar in their flight paths. So this is not just about coyotes in the western part of the country.

Yesterday, after our debate here, Secretary Glickman at the Department of Agriculture did communicate with us, and I just want to read a portion of his letter into the record. It is important here, where he says: "A reduction of \$10 million or more would constitute a serious cut, perhaps up to one-third of the program's budget, and lead to draconian reductions of personnel in this account across the country."

Since the program is largely cooperative and requires State and local matches, he is very concerned that what is going to happen is that the local shares will drop out. He says, "Faced with a cut of this size, we may have no option but to eliminate work to protect endangered and threatened species, which is another function of the office, to prevent bird strikes at airports," which I have talked about "and control animals that can transmit diseases to humans, such as rabies, plague, and lyme disease."

I continue to be amazed in my own district, the largest share of which is

an urban district, to watch householders want to try to bring deer to wander into their country and feed them with their backyard feeders, with lyme disease spreading. Last year, we had sightings in eastern Ohio of rabies from raccoon.

So this is not something that is just out in the middle of Oklahoma or even New Mexico. But States like Ohio, which has more urban areas than any other in the country, are severely impacted.

Truly, State and local governments cannot deal with this problem alone. A lot of the research and so forth is Federal research that benefits every single State. A lot of the tracking that is done is Federal tracking of these animals.

Secretary Glickman advises us, we believe the President's budget proposal to gradually increase cost sharing is a more reasoned reform than the amendment being offered and is consistent with the bill's report language.

Normally, I support my colleague, the gentleman from Oregon. But I think in this situation, where the Secretary of Agriculture does view this amendment as having difficulties and where we really feel that it is taking such a major share of funding that is necessary for animal control, wildlife control in different parts of the country, it really does not make sense, and it goes too far.

I do think that his emphasis on trying to get nonlethal means, where possible, of animal damage control is a very helpful suggestion and one I know that the department is working hard on and, in fact, needs this research money that is a part of this account to pursue.

I will tell you, when I see coyotes by the pack by our local metropolitan airport, which is located inside the city of Toledo, and we have coyotes running around the source systems of Los Angeles, we have a situation where this type of wild animal is breeding with dogs, and you do not produce a friendly animal as a result.

In some cases, you cannot have a nonlethal solution. So where we try to minimize the damage to animals and we try to be as humane as possible, sometimes it is just not possible in some of these situations.

With all due respect to my colleagues, the gentleman from Oregon and the gentleman from New Hampshire, I would say that the amendment goes too far, and I would urge Members to reject this amendment and follow the recommendations of our own Secretary of Agriculture.

□ 1600

Ms. FURSE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of this amendment. I should say at the outset, I am a westerner and I am a farmer. In fact, we find that one of the greatest damages to our crops are mice, and the coyotes in the neighborhood keep that mice population down,

so I think we need to be a little sophisticated when we think about coyotes.

In 1980, I ran a statewide ballot measure to ban leg-hold traps in Oregon. We did not win because the opposition said things about human health that were not true, and in fact we won a case against them, because in fact we found that a lot of the arguments they made, which are being made today, are not really true.

Let me tell my colleagues what is true about this program. It is cruel, it is wasteful, and it is a subsidy to corporate farmers. Those three things are true. It is cruel, because we are talking about lethal control. I do not know how many of my colleagues have seen a leg-hold trap. It is a steel trap. The animal put its foot into the trap, the trap snaps on the animal's foot, with tremendous pressure, and we have seen many, many examples of animals caught in these traps who have chewed their own legs off to get away from this agonizing situation.

The other uses are these poison lethal collars. Oh, they are very efficient. The only problem is that things like cougars chew on these when they see a dead sheep that has this collar on it. Lots of domestic dogs are killed by biting on these collars that are on these critters. Coyotes are not the only ones who like sheep, dead ones specially laid out for them. So they are lethal and they are wasteful.

They are wasteful in two ways: First of all they are wasteful because millions, literally millions of nontarget species die in these traps, die because of these lethal collars. Cougars. Our beautiful, beautiful bald eagle. There are many, many bald eagles which land, they see the trap, they see the food that is there in that trap, they get into it, it snaps on their foot and the wildlife is destroyed. So that is very wasteful. But it is a wasteful in a second way. It is incredibly wasteful of money. More money is spent in this program killing the predators than the value of the livestock that supposedly is being protected. It just does not make sense.

It is a corporate giveaway. Big farmers love this program. They can say that these dead sheep that died for some other reason, died because of predators, bring predator control in, you get the money from the program, it is great. But it is dreadful. It is a dreadful program. That is why the League of Conservation Voters, all the animal rights organizations, all of the large environmental organizations have said that this is a vote that they will count. It is not just them. It is not just the environmental organizations. It is the taxpayer organizations, also. They will score this vote. Because this vote is to end a program in the West that is cruel, is wasteful and is merely a subsidy. I ask my colleagues, if you voted yesterday for this amendment, vote again, and ignore all this thing you have heard that it is going to stop you getting slugs out of our garden. I do

not know a slug that gets in a leg-hold trap, not one. There is a lot of nonsense about this issue. But the issue is, it is cruel, it is wasteful of our dollars and the nontarget species, and it should be ended.

I ask Members to vote with DEFAZIO and BASS on this very important amendment.

Mr. DEFAZIO. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think we are reaching the end of this debate, and I appreciate the fact that the committee members allowed us to correct the drafting error by Legislative Counsel. That means we are going to have a straight up-or-down vote, the same vote that we took yesterday, the same issues, nothing has changed.

Let us get a few facts straight. I serve on the Subcommittee on Aviation. I am certainly very concerned about bird strikes. We are not touching the money that goes to bird strikes. You can say, yes, since it is an appropriations bill, we cannot target the cut at one particular program, but we can certainly indicate where we want it to come.

Ten million of the \$28 million in this program is spent for livestock protection in 17 western States, including my own State who gets nearly half a million dollars from the Federal Government. So I am not just cutting in somebody else's backyard. I think this is a bad program, it is a waste of taxpayers' money. I do believe it constitutes a subsidy. It encourages the Federal Government, sends Federal employees on to private property to undertake lethal predator control, generally pretty indiscriminate lethal predator control efforts on private lands to theoretically protect those sheep or cattle from predation. Actually the losses due to lung disease, to birthing problems, to digestive problems are about 97 percent of the losses in the West. Three percent, according to our own animal damage control people, now called Wildlife Services, come from predation. So we are spending all this money for a few people on private lands to protect predation that is not really happening.

I am puzzled by Secretary Glickman. Kansas has the most progressive program in the country. They pretty much stopped this program 10 years ago and they have an incredibly successful program with higher concentrations of coyotes than their neighboring States with very, very, very little loss because they have moved away from the indiscriminate lethal controls and gone to more effective methods, without the Federal subsidy.

So why should the other 33 States and Members from the other 33 States pay for a subsidy to these western States, to these private interests in these States? I am puzzled by that. It is not public health and safety.

If you go through the budget, if you took out \$10 million out of the budget, you are right, Secretary Glickman if

he wanted could say, "Well, I'm going to teach them a lesson, I'm going to cut the money out of the airports and I'm going to put the money into the ineffective subsidized program on private lands." I do not believe they will do that. If we cut this \$10 million, we will bring this wasteful program to an end.

The other programs are all categorized. We have here the program for property, for human health, for crop, for natural resources, for forest and range protection, and even for aquaculture protection. Those all within the administration's budget get separate little line items. Now we are going after one program and one program only, and the total amount of money that goes into that program, \$10 million, \$10 million spent to protect private property for private purposes with very little contribution. In my State, zero is contributed by the beneficiaries. It is paid for by State taxpayers and Federal taxpayers. That situation occurs in other States. In some States indeed there is a share paid by some of the ranchers. They can certainly continue those activities on their own or in cooperation with their State if their State legislatures want to put up general fund money for these activities. But the Federal Government has no business being involved in this.

Then to the issue of how many coyotes are running around the gentlewoman from Ohio's district or Los Angeles, that is true. This program has been going full bore for 60 years, and because they have not looked at the science and effective control methods, by going after and breaking up the alpha, killing the alphas and breaking up the packs, there are more coyotes now than there were 60 years ago before we spent hundreds of millions of dollars on these programs and hit a whole bunch of nontarget species. What we are doing is not working, it is time to admit it is not working. If the committee in its wisdom wanted to work through conference or something else and put this money totally into research or into more effective nonlethal methods, model the State program in Kansas, other things they could do, I would be supportive of that. But the point is this money is being wasted, it is ineffective, it does constitute a subsidy, and our colleagues should know that this will be the vote that will be scored, not the vote yesterday, this vote, the vote to reverse the vote.

I would hope that Members would not within a 24-hour period, given the fact that nothing has changed, reverse their vote and reverse their position.

Mr. SMITH of Oregon. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am quoting from the USDA report and part of a letter that the Secretary sent up regarding this issue. I want to quote from a response by them:

"The animal damage control specialists perform a variety of activities to protect agricultural resources, but also help protect public health and safety, natural resources

and property. A budget reduction of \$10 million would lead to a major reduction in ADC field personnel throughout the country and significantly affect the program's infrastructure."

Mr. Chairman, this is a misguided effort by those who do not like agriculture, and obviously we have seen the results of that. People here all day long and all day yesterday, who are the enemies of agriculture, are attacking this program from every point and every source.

By the way, there will be a scoring here. I have a new scoring program. Everybody scores, so I am going to start scoring for agriculture. Now, all you are out that I have heard. There are some that may be in, but we will see how they act and how they vote. So we are going to score.

Mr. Chairman, my colleagues have missed the point. They have attempted to attack agriculture, and they have really attacked the effort to manage wildlife in America. Because we have trained experts that we have in the services, in the wildlife services, and in the case of Oregon and in the case of your States wildlife specialists who have dedicated their lives to the balance of wildlife and the balance of nature. If this should pass, sure it will impact those people who raise domestic animals. But I want to re-emphasize to some Members who do not know about the predation in the West and around the country of deer and of antelope and of elk and of our wildlife. If we allow the imbalance to continue, we continue to ruin that side of our wildlife population. I do not suppose we want to do that. I doubt it. But I do not think we do. But that is exactly what we are doing if we vote for this amendment.

Now, one other thing. Let us assume that the gentleman from Oregon does not know what he is talking about and let us assume that I do not know what I am talking about, and we will let the gentleman from New Hampshire go on his own, so I will make a deal with you. If you will agree that we do not know what we are talking about, why do we not turn it over to the specialists, to the wildlife specialists in this country and in Oregon to manage our wildlife and to manage this situation. If you want to take my deal, you will vote against the amendment.

Mr. LUCAS of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Oregon. I yield to the gentleman from Oklahoma.

Mr. LUCAS of Oklahoma. We have discussed the nature of coyotes. The gentleman having been involved in the livestock business a substantial part of his life, could he describe a moment to my colleagues the nature of coyotes and how they interact in certain times of the year and how they travel in packs and how they go after breeding stock and some of the other things that go along with this?

Mr. SMITH of Oregon. As the gentleman understands, there were those

who I have dealt with in Oregon who believe that coyotes will never kill anything alive. I would submit to the gentleman from New Mexico (Mr. SKEEN) who runs sheep, we have been trying to get rid of them for some time in cattle country, and coyotes are helping, but it is awful what can happen with a pack of coyotes at certain times of the year, and in the spring of the year when calves are small and when sheep are producing to see the relentless enjoyment of just killing when packs of coyotes run together. That is the answer.

Mr. LUCAS of Oklahoma. That literally a cow or a sheep is defenseless from a pack when they are on the move together, a factor that we need to bear in mind.

The CHAIRMAN pro tempore (Mr. BLUNT). The Clerk will read the final lines of the bill.

The Clerk read as follows:

This Act may be cited as the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999".

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to speak in favor of this bill, which appropriates funds for important Federal agriculture and social programs.

Our nation was founded by farmers, and they are still a vital part of our economy, and our identity as Americans. For the better part of the history of this nation, farmers were our pioneers, our philosophers, our engineers, and our statesmen. I hope that we do not turn our back on them as we move forward into the Age of Information.

This bill appropriates funds that will be used by farmers and other agriculture-oriented businesses across America. The bill increases last years appropriations by \$6.4 billion, which amounts to a 13% increase. This amount is the minimum increase needed in order to assure that these federal programs are meaningful and worthwhile to the people that they are supposed to assist.

Many farmers need federal support to generate income and maintain their livelihood. Typically, federal assistance comes in the form of low-interest federal loans, which are not unlike those that we provide college and university students. Like education, these loans are an investment in something that will bring great rewards in the near future. Like university students, farmers need these loans in order to avoid highly cumbersome private loans which would negatively effect the way that they do their business. We must maintain these programs, so that American Farmers can feed themselves, and their families.

As a Member of the Congressional Black Caucus, I am also happy to report that this bill contains a provision which assists black farmers in their quest for fairness in the system. It does so by waiving certain statutes of limitation which have effectively barred many claims of racial discrimination that have remained unaddressed and unresolved by the proper authorities. I give my wholehearted thanks to the Rules Committee Members who allowed this provision to be made part of H.R. 4101.

As Founder and Chair of the Congressional Children's Caucus, and as a member of the Congressional Caucus for Women's Issues, I also support this bill because it contains fund-

ing for many programs which are relied upon by children and families everywhere. The most important of these programs is Food Stamps. This bill appropriates \$22.6 billion for that program, which has become an important part of the lives of many low-income, single-parent, and minority families. By supporting this budget, we assure that thousands of innocent children will not know the meaning of hunger.

Two other programs important to our families and our future which are funded under this set of appropriations, are the Federal School Breakfast and Lunch programs. Private and public studies have shown the link between nutrition and effective learning, therefore, we must continue these programs in order to ensure that our investment in education will be realized by this Nation's children.

I appreciate the bipartisan effort which went into the drafting of this bill. United States agriculture feeds our Nation, and it is time to do our part to make sure that none of our citizens go hungry. I encourage you all to vote for this bill.

Mr. POMEROY. Mr. Chairman, I rise in strong support of the Market Access Program (MAP) and oppose any attempt to further debilitate the program's capacity to aid in the exportation of U.S. agricultural commodities. The Market Access Program boosts agriculture and international trade, and promotes small business and American-made products. Put simply, MAP helps develop foreign markets for U.S. exports. The MAP provides cost-share funds to nearly 800 U.S. businesses, cooperatives, and non-profit trade associations to promote their products overseas. The funding is limited to U.S. entities.

America's farmers are still adjusting to "Freedom to Farm," and it would be unwise and unfair to take away other underlying support programs like the MAP. I have said the same thing about research funding and funding for adequate revenue and crop insurance. Congress promised America's farmers certain fundamental support mechanisms as we moved to "Freedom to Farm." Although producers no longer can rely on the government to come through and pick up the tab when commodity prices are lower than target prices, they need to be able to depend on certain supplemental programs run by the Department of Agriculture that keep producers' heads above an already narrow margin.

American agriculture is continually threatened by subsidized foreign competition. The European Union and other foreign competitors maintain a 10 to 1 advantage over the U.S. in terms of export subsidies, and with that advantage they can expand their share of the world market at the expense of U.S. farmers and ranchers.

In my state of North Dakota, the USDA-Bureau of Census tells us the MAP contributes indirectly to the promotion of approximately \$1.7 billion in exports, and 29,300 jobs. Specifically, farmer cooperative-members of the Minn-Dak sugarbeet growers, and North American Bison Cooperative benefit directly from MAP funding. These direct benefits, for instance, produce indirect benefits throughout many facets of the economy.

Rural income depends on—and is at the mercy of—many variables. Weather and domestic supply are examples. But the ability to export overseas and compete with foreign markets is another integral piece to maintaining rural income. The MAP offers one small

opportunity for American farmers to compete in the international market—during a time when agriculture is our nation's most export-dependent industry and exports account for one-third of U.S. production. The elimination of MAP would represent unilateral disarmament in the face of continued subsidized foreign competition.

Oppose reductions to the MAP. Don't take away this important tool which provides access for U.S. farmers to assistance which knocks down foreign barriers and reduces the costs of competing in the world market.

Mr. POSHARD. Mr. Chairman, I rise today in favor of this appropriations measure, which is of such enormous importance to the 19th District of Illinois. I commend Chairman SKEEN and Congresswoman KAPTUR for their efforts in crafting a bill which will help farmers and rural communities across the country.

In addition, I am very pleased to note that H.R. 4101 includes \$34 million in funding for implementation of the FDA's tobacco regulations, designed to combat teenage smoking. It is critical that this body demonstrate its support of the FDA's efforts to protect underage consumers from the dangers of tobacco, and I thank the members of the subcommittee for recognizing the importance of this issue.

Mr. Chairman, we must not relax our efforts where America's children are concerned. The time has come to take a stand against the devastating effect of tobacco on our nation's youth, and this bill will help us to do that. I urge my colleagues to support this measure and to continue to fight for the health and safety of our children.

The CHAIRMAN pro tempore. If there are no further amendments, under the rule the Committee now rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PEASE) having assumed the chair, Mr. BLUNT, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4101) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, pursuant to House Resolution 482, he reported the bill, as amended pursuant to that rule back to the House with further sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment?

Mr. SKEEN. Mr. Speaker, I demand a separate vote on the so-called Bass amendment.

The SPEAKER pro tempore. Is a separate vote demanded on any other amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

□ 1615

The SPEAKER pro tempore (Mr. PEASE). The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: Insert before the short title the following new section.

SEC. (A) LIMITATION ON USE OF FUNDS.—Not more than \$18,800,000 of the funds made available in this Act may be used for the Wildlife Services Program operation under the heading "ANIMAL AND PLANT HEALTH INSPECTION SERVICE".

(b) CORRESPONDING REDUCTION IN FUNDS.—The amount otherwise provided by this Act for salaries and expenses under the heading "ANIMAL AND PLANT HEALTH INSPECTION SERVICE" is hereby reduced by \$10,000,000.

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

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

RECORDED VOTE

Mr. DEFAZIO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Without objection, if no other record vote or debate intervenes before the question of passage, then the Chair will reduce to 5 minutes the minimum time for electronic voting on the question on passage.

There was no objection.

The vote was taken by electronic device, and there were—ayes 192, noes 232, not voting 9, as follows:

[Roll No. 263]

AYES—192

Ackerman	Ehlers	Klecza
Allen	Engel	Klink
Andrews	English	Kucinich
Archer	Eshoo	Lantos
Baldacci	Evans	LaTourette
Barrett (WI)	Farr	Lazio
Bass	Fattah	Lee
Becerra	Fawell	Levin
Berman	Filner	Lewis (GA)
Bilirakis	Forbes	Lipinski
Blagojevich	Ford	LoBiondo
Blumenauer	Fox	Lofgren
Boehlert	Frank (MA)	Lowey
Bonior	Franks (NJ)	Luther
Borski	Frelinghuysen	Maloney (CT)
Brady (PA)	Furse	Maloney (NY)
Brown (CA)	Gejdenson	Manton
Brown (FL)	Gephardt	Matsui
Brown (OH)	Gilchrest	McCarthy (MO)
Campbell	Gilman	McCarthy (NY)
Capps	Goodling	McCollum
Cardin	Gordon	McDermott
Carson	Goss	McGovern
Castle	Greenwood	McHale
Chabot	Gutierrez	McKinney
Clay	Hall (OH)	McNulty
Clyburn	Harman	Meehan
Conyers	Hastings (FL)	Meeks (NY)
Costello	Hilliard	Menendez
Cox	Hinchee	Metcalf
Coyne	Horn	Mica
Cummings	Houghton	Millender-
Davis (FL)	Inglis	McDonald
Davis (IL)	Jackson (IL)	Miller (CA)
Davis (VA)	Jefferson	Miller (FL)
DeFazio	Johnson (CT)	Moakley
DeGette	Johnson (WI)	Moran (VA)
Delahunt	Jones	Morella
DeLauro	Kelly	Nadler
Deutsch	Kennedy (MA)	Neal
Diaz-Balart	Kennedy (RI)	Neumann
Dicks	Kennelly	Obey
Dixon	Kildee	Olver
Doggett	Kilpatrick	Owens
Duncan	Kind (WI)	Pallone

Pascrell	Rush	Tierney
Paul	Sabo	Torres
Payne	Sanders	Towns
Pease	Sanford	Upton
Pelosi	Sawyer	Velazquez
Petri	Saxton	Vento
Porter	Scarborough	Wamp
Poshard	Schumer	Waters
Price (NC)	Sensenbrenner	Watt (NC)
Ramstad	Shays	Waxman
Rangel	Sherman	Weldon (PA)
Rivers	Skaggs	Weller
Roemer	Smith (NJ)	Wexler
Rogan	Smith, Adam	Weygand
Rohrabacher	Stark	Wolf
Ros-Lehtinen	Stokes	Woolsey
Rothman	Strickland	Wynn
Roukema	Sununu	Yates
Roybal-Allard	Tauscher	
Royce	Taylor (MS)	

NOES—232

Abercrombie	Gibbons	Ortiz
Aderholt	Gillmor	Oxley
Armey	Goode	Packard
Bachus	Goodlatte	Pappas
Baesler	Graham	Parker
Baker	Granger	Pastor
Ballenger	Green	Paxon
Barcia	Gutknecht	Peterson (MN)
Barr	Hall (TX)	Peterson (PA)
Barrett (NE)	Hansen	Pickering
Bartlett	Hastert	Pickett
Barton	Hastings (WA)	Pitts
Bateman	Hayworth	Pombo
Bentsen	Hefley	Pomeroy
Bereuter	Hefner	Portman
Berry	Herger	Pryce (OH)
Bilbray	Hill	Quinn
Bishop	Hilleary	Radanovich
Bliley	Hinojosa	Rahall
Blunt	Hobson	Redmond
Boehner	Hoekstra	Regula
Bonilla	Holden	Reyes
Bono	Hooley	Riggs
Boswell	Hostettler	Riley
Boucher	Hoyer	Rodriguez
Boyd	Hulshof	Rogers
Brady (TX)	Hunter	Ryun
Bryant	Hutchinson	Salmon
Bunning	Hyde	Sanchez
Burr	Istook	Sandlin
Burton	Jenkins	Schaefer, Dan
Buyer	John	Schaefer, Bob
Callahan	Johnson, E. B.	Scott
Calvert	Johnson, Sam	Serrano
Camp	Kanjorski	Sessions
Canady	Kaptur	Shadegg
Chambliss	Kasich	Shaw
Chenoweth	Kim	Shimkus
Christensen	King (NY)	Shuster
Clayton	Kingston	Siskis
Clement	Klug	Skeen
Coble	Knollenberg	Skelton
Coburn	Kolbe	Smith (MI)
Collins	LaFalce	Smith (OR)
Combest	LaHood	Smith (TX)
Condit	Lampson	Smith, Linda
Cook	Largent	Snowbarger
Cooksey	Latham	Snyder
Cramer	Leach	Solomon
Crane	Lewis (CA)	Souder
Crapo	Lewis (KY)	Spence
Cubin	Linder	Spratt
Cunningham	Livingston	Stabenow
Danner	Lucas	Stearns
Deal	Manzullo	Stenholm
DeLay	Martinez	Stump
Dickey	Mascara	Stupak
Dooley	McCrery	Talent
Doolittle	McHugh	Tanner
Dreier	McInnis	Tauzin
Dunn	McIntosh	Taylor (NC)
Edwards	McIntyre	Thomas
Ehrlich	McKeon	Thompson
Emerson	Meek (FL)	Thornberry
Ensign	Minge	Thune
Etheridge	Mink	Thurman
Everett	Mollohan	Tiahrt
Ewing	Moran (KS)	Trafficant
Fazio	Murtha	Turner
Foley	Myrick	Visclosky
Fossella	Nethercutt	Walsh
Fowler	Ney	Watkins
Frost	Northup	Watts (OK)
Galleghy	Norwood	Weldon (FL)
Ganske	Nussle	
Gekas	Oberstar	

White Wicker Young (AK)
Whitfield Wise Young (FL)

NOT VOTING—9

Cannon Hamilton McDade
Dingell Jackson-Lee Slaughter
Doyle (TX)
Gonzalez Markey

□ 1638

Messrs. HOEKSTRA, EHRLICH and SNYDER and Ms. MEEK of Florida changed their vote from "aye" to "no." Messrs. BRADY of Pennsylvania, GILMAN, LAZIO of New York, DICKS and TORRES changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, during rollcall vote No. 263, the Bass/DeFazio Amendment to Protect Wildlife, I was unavoidably detained. Had I been present, I would have voted "aye."

The SPEAKER pro tempore (Mr. PEASE). 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.

The SPEAKER pro tempore. The question is on the passage of the bill.

Pursuant to clause 7 of rule XV, the yeas and nays are ordered.

This will be a 5 minute vote.

The vote was taken by electronic device, and there were— yeas 373, nays 48, not voting 12, as follows:

[Roll No. 264]

YEAS—373

Abercrombie Calvert Ehlers
Ackerman Camp Ehrlich
Aderholt Canady Engel
Allen Capps English
Archer Cardin Eshoo
Armey Carson Etheridge
Bachus Castle Evans
Baesler Chambliss Everett
Baker Christensen Ewing
Baldacci Clay Farr
Ballenger Clayton Fattah
Barcia Clement Fawell
Barrett (NE) Clyburn Fazio
Bartlett Coble Filner
Barton Coburn Foley
Bass Combest Forbes
Bateman Condit Fossella
Becerra Conyers Fowler
Bentsen Cook Fox
Bereuter Cooksey Frelinghuysen
Berman Costello Frost
Bilbray Cox Furse
Bilirakis Coyne Gallegly
Bishop Cramer Ganske
Blagojevich Crapo Gejdenson
Bliley Cubin Gekas
Blumenauer Cummings Gephardt
Blunt Cunningham Gibbons
Boehlert Danner Gilchrist
Boehner Davis (FL) Gillmor
Bonilla Davis (IL) Gilman
Bonior Davis (VA) Goode
Bono Deal Goodlatte
Borski DeFazio Goodling
Boswell DeGette Gordon
Boucher Delahunt Goss
Boyd DeLauro Graham
Brady (PA) DeLay Granger
Brady (TX) Deutsch Green
Brown (CA) Diaz-Balart Greenwood
Brown (FL) Dickey Gutierrez
Brown (OH) Dicks Gutknecht
Bryant Dixon Hall (OH)
Bunning Doollittle Hansen
Burr Dreier Harman
Burton Duncan Hastert
Buyer Dunn Hastings (FL)
Callahan Edwards Hastings (WA)

Hayworth McCollum Sanders
Hefner McCreery Sandlin
Herger McGovern Sawyer
Hill McHale Saxton
Hilleary McHugh Schaefer, Dan
Hilliard McLinnis Schaffer, Bob
Hinchev McIntosh Schumer
Hinojosa McIntyre Scott
Hobson McKeon Serrano
Hoekstra McKinney Sessions
Holden McNulty Shaw
Hoolley Meek (FL) Shays
Horn Meeks (NY) Sherman
Hostettler Metcalf Shimkus
Houghton Mica Shuster
Hoyer Millender- Sisisky
Hulshof McDonald Skaggs
Hunter Miller (FL) Skeen
Hutchinson Minge Skelton
Hyde Mink Smith (MI)
Inglis Moakley Smith (NJ)
Istook Mollohan Smith (OR)
Jackson (IL) Moran (KS) Smith (TX)
Jackson-Lee Morella Smith, Adam
(TX) Murtha Snowbarger
Jefferson Myrick Snyder
Jenkins Neal Solomon
John Nethercutt Souder
Johnson (CT) Neumann Spence
Johnson, E. B. Ney Spratt
Johnson, Sam Norwood Stabenow
Jones Nussle Stenholm
Kanjorski Olver Stokes
Kaptur Ortiz Strickland
Kasich Owens Stupak
Kelly Oxley Talent
Kennedy (MA) Packard Tanner
Kennedy (RI) Pallone Tauscher
Kennelly Pappas Tauzin
Kildee Parker Pascrell Taylor (NC)
Kilpatrick Pascrell Thomas
Kim Pastor Thompson
King (NY) Paxon Thornberry
Kingston Payne Thune
Klink Pease Thurman
Klug Pelosi Tiahrt
Knollenberg Peterson (MN) Torres
Kolbe Peterson (PA) Towns
LaFalce Pickering Traficant
LaHood Pickett Turner
Lampson Pitts Upton
Lantos Pombo Velazquez
Largent Pomeroy Vento
Latham Porter Visclosky
LaTourette Poshard Walsh
Lazio Price (NC) Wamp
Leach Pryce (OH) Waters
Lee Quinn Watkins
Levin Lewis (CA) Rahall Watt (NC)
Lewis (GA) Rangel Watts (OK)
Lewis (KY) Redmond Waxman
Linder Regula Weldon (FL)
Lipinski Reyes Weldon (PA)
Livingston Riggs Weller
LoBiondo Riley Wexler
Lucas Rivers Weygand
Luther Rodriguez White
Maloney (CT) Rogan Whitfield
Maloney (NY) Rogers Wicker
Manton Ros-Lehtinen Wise
Manzullo Rothman Wolf
Martinez Roukema Woolsey
Mascara Roybal-Allard Wynn
Matsui Rush Yates
McCarthy (MO) Ryun Young (AK)
McCarthy (NY) Sanchez Young (FL)

NAYS—48

Andrews Johnson (WI) Ramstad
Barr Kind (WI) Roemer
Barrett (WI) Kleczka Rohrabacher
Berry Kucinich Royce
Campbell Lofgren Sabo
Chabot Chabot Lowey Salmon
Chenoweth McDermott Sanford
Collins Meehan Scarborough
Crane Menendez Sensenbrenner
Doggett Moran (VA) Shadegg
Dooley Nadler Stark
Ensign Oberstar Stearns
Frank (MA) Obey Stump
Franks (NJ) Paul Sununu
Hall (TX) Petri Taylor (MS)
Hefley Portman Tierney

NOT VOTING—12

Doyle Ford
Emerson Gonzalez

Hamilton McDade Northrup
Markey Miller (CA) Slaughter

□ 1647

Mr. BARR of Georgia changed his vote from "yea" to "nay."

Mr. BERMAN and Ms. LEE changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. DOYLE. Mr. Speaker, due to the death of a family member, I was unavoidably absent on the afternoon of Wednesday, June 24, 1998, and as a result, missed rollcall votes 260 through 264.

Had I been present, I would have voted yes on rollcall 260, yes on rollcall 261, yes on rollcall 262, yes on rollcall 263, and yes on rollcall 264.

PERSONAL EXPLANATION

Mrs. NORTHUP. Mr. Speaker, on rollcall No. 264, I was unavoidably detained. Had I been present, I would have voted "yes."

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate agrees to the report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2646) "An Act to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes."

PROVIDING FOR CONSIDERATION OF H.R. 4103, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1999

Mr. GOSS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 484 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 484

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 4103) making appropriations for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with clause 2(l)(6) of rule XI, clause 7 of rule XXI, or section 306 of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and

ranking minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. The amendments printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. Points of order against provisions in the bill, as amended, for failure to comply with clause 2 or 6 of rule XXI are waived. During consideration of the bill for further amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. Consideration of section 8106 for amendment under the five-minute rule shall not exceed one hour. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommend with or without instructions.

The SPEAKER pro tempore. The gentleman from Florida (Mr. GOSS) is recognized for 1 hour.

Mr. GOSS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my friend, the distinguished gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, Mr. Speaker, all time yielded is for purposes of debate only on this subject.

Mr. Speaker, House Resolution 484 is a modified open rule providing for the consideration of H.R. 4103, the FY99 defense appropriations bill. The rule waives points of order against consideration of the bill for failing to comply with clause 2(1)(6) of rule XI requiring a 3-day layover of the committee report, clause 7 of rule XXI requiring printed hearings and reports to be available for 3 days prior to consideration of a general appropriations bill, and section 306 of the Budget Act of 1974, prohibiting consideration of legislation within the jurisdiction of the Committee on the Budget unless reported by that committee.

This pertains to scoring provisions which have in the past been carried by the DOD bill, and which have been signed off on by the Committee on the Budget.

The rule provides for 1 hour of general debate, equally divided between the chairman and ranking minority member of the Committee on Appropriations. The rule provides that amendments printed in the report of the Committee on Rules accompanying

this resolution shall be considered as adopted in the House and in the Committee of the Whole.

Mr. Speaker, this is an important appropriations bill. This is a somewhat complicated rule. I am trying to explain it. I would appreciate the Members' attention.

The amendments about which I expect we will have significant debate throughout this hour, based on our conversations yesterday in the Committee on Rules, pertain to two distinct issues.

The first is an amendment brought forward by the gentleman from New York (Mr. SOLOMON), the distinguished chairman of the Committee on Rules, addressing a deplorable circumstance involving the sale by a contracting firm of the congressional Medal of Honor. We applaud the gentleman from New York (Mr. SOLOMON) for taking this on, and I note there is no disagreement with self-executing this provision into the legislation to take care of this matter.

The second issue addressed through this provision of the rule pertains to the year 2000 issue. The shorthand is Y2K. Members should get used to it, we are going to hear it a lot, the matter of preparing the Defense Department's computer systems to deal with the so-called millennium bug, which will occur as the year 2000 begins.

Our colleague, the gentleman from California (Mr. STEVE HORN) of the committee on Government Reform and Oversight has for some time, in fact, quite some time, been pushing the entire executive branch to become more aggressive in preparing for this problem, the Y2K problem. The gentleman from California (Mr. HORN) recently issued a report card on the progress being made by Federal agencies, a report card full of Cs and Fs that would cause any parent real alarm if it were brought home from school by their child.

The fact is that the administration has been woefully, if not negligently, slow in coming to grips with this Y2K problem. It has consistently underestimated the needs of all agencies in ensuring that mission critical computer systems across the board do not fail come January 1, 2000, and particularly those systems upon which our national security depends.

The truth is, no one can credibly say that they did not see this problem coming. Most of us have known for some time that the year 2000 will begin and that our computer-oriented society needs to prepare for the change. In fact, some of us have repeatedly engaged the administration on this issue as it applies to the intelligence field.

Likewise, the defense appropriators, frustrated by the fact that there were no additional funds requested for the DOD's FY99 budget to meet the Y2K need, sought to force the administration to face facts by including additional monies in this spending bill for the Y2K fix.

However, because the administration adopted what could be described as a head-in-the-sand approach to this problem and abdicated its responsibility to identify the true need and target a source for the necessary funds, the money as of now does not have an offset. In other words, there is a problem and no money to fix it.

While I strongly support efforts to boost the intensity with which we tackle the Y2K problem, I do not believe that poor planning and a lack of willingness on the part of the administration to face this problem head on should justify our abdication or any abdication of the principles of fiscal discipline.

For that reason, I have opposed using an emergency declaration in this bill to bail the administration out of the mess it has created. Therefore, what we are doing in this rule is striking that emergency declaration, with the knowledge that we fully intend to come back in the coming weeks with a separate bill, hopefully one that is paid for, to address the Y2K problem government-wide.

In addition to self-executing out this emergency provision for Y2K, the rule also removes the emergency designation for the \$20 million allocation in the bill relating to the tragic cable car incident in Italy, leaving the funds intact and fully offset from the Navy operations and maintenance account.

Mr. Speaker, the rule waives points of order against provisions in the bill which do not comply with clause 2 of rule XXI prohibiting unauthorized or legislative appropriations in a general appropriations bill, and clause 6 of rule XXI, prohibiting reappropriations in a general appropriations bill. This is not unusual for an appropriations bill.

The rule provides priority in recognition for those amendments that have been previously printed in the CONGRESSIONAL RECORD, and it provides that the chairman of the Committee of the Whole may postpone recorded votes on any amendment, and may reduce voting time on postponed questions to 5 minutes, providing that the voting time on the first in a series of questions is not less than 15 minutes. Nothing new there.

The one provision of this rule that makes it a modified open rule, rather than a fully open rule, is that one which limits debate under the 5-minute rule on amendments to section 8106 of the bill to 1 hour. This debate centers on the highly controversial substantive issue of the War Powers Act, a matter of critical importance to all Members, but also one with the potential to become bogged down in extended debate. If memory serves me right, the author of this amendment agreed that an hour would be sufficient.

In the interest of ensuring that the underlying appropriations bill is not unnecessarily sidetracked, we have acceded to the request of the chairman of the Committee on Appropriations to limit debate on this one matter.

Lastly, Mr. Speaker, this rule provides for the traditional motion to recommit, with or without instructions. Mr. Speaker, as chairman of the House Permanent Select Committee on Intelligence, I would like to briefly extend my thanks to the gentleman from Florida (Mr. YOUNG) and the gentleman from Pennsylvania (Mr. MURTHA) for their efforts to rebuild our Nation's defense capabilities, including particularly the critical needs of the intelligence community.

The headlines in recent days and weeks have been full of instances where the eyes, ears, and brains of our intelligence capabilities have come under sharp focus. The truth is that we need good, timely, and well-analyzed intelligence now more than ever for our decision-makers as we grapple with the 21st century and the host of new threats and uncertainties confronting our national security, to say nothing of the technology we now face.

□ 1700

Now is not the time to become complacent and let down our guard. Good intelligence requires a long-term, steady commitment of attention, oversight and resources. The lesson we keep learning when something goes wrong in this arena is that we need to rebuild our capabilities to produce better and more focused intelligence, not further cut back on the tools in the tool box we make available to our policy-makers.

Mr. Speaker, I urge support for this rule and for the underlying bill.

[From the Washington Post, May 21, 1998]
FOR GORE, LOW PROFILE ON A HIGH-TECH
HEADACHE

(By Stephen Barr and Rajiv
Chandrasekaran)

When it's time to talk technology, Vice President Gore never seems to be at a loss for words. Wiring schools to the Internet. Celebrating the virtues of electronic mail. Using computers to streamline government.

But when it comes to the Year 2000 computer glitch, arguably the nation's most pressing technological problem, Gore has been strikingly silent. There have been no public speeches, no "town hall" meetings, no photo ops with programmers.

For Gore, that may be because the Year 2000 glitch isn't just a technological worry, it's also a political one that could be potentially damaging to him, political analysts say. Industry experts contend that the federal government has been slow to address the issue, raising worries that crucial computer systems—from those that control airplane traffic to ones that process payments to schools, farmers and veterans—could grind to a halt on Jan. 1 2000. That's right when Gore might find himself campaigning across Iowa and New Hampshire, seeking the Democrat presidential nomination.

"It's very much a factor in his positioning for the 2000 race," suggested Andrew L. Shapiro, a fellow at the Berkman Center for Internet and Society at Harvard University. "Al doesn't want it to be Al's mess." Gore spokesman Lawrence Haas said the vice president receives regular briefings on the government's progress in fixing Year 2000 computer problems, Haas personally directed the Cabinet to make the fixes a high priority and has spoken about the potential crisis to

the President's Management Council, a group of senior political appointees.

"He is not avoiding the issue," Haas said. Asked to point out speeches in which Gore has talked about the so-called millennium bug, Haas could not identify one.

The Year 2000 problem stems from the fact that many computer systems use a two-digit dating system that assumes that 1 and 9 are the first two digits of the year. Without specialized reprogramming, the systems will recognize "00" not as 2000 but 1900, a glitch that could cause computers to either stop working or start generating erroneous data.

Virtually every Cabinet department and federal agency promises it will have fixed and tested its computer systems and links before the 2000 deadline, but any significant airline delay, power outage or telecommunications breakdown could give Gore's political opponents an opening to question his credibility or mock his efforts to "reinvent" government.

Republicans, in particular, appear ready to try to pin any problem on him. In a recent memo to "members of Congress and conservative leaders" on the Year 2000 problem, would be GOP presidential contender Steve Forbes recently asked, "What has the administration's technology point man, Vice President Al Gore, been doing for the past five years?"

Rep. Stephen Horn (R-Calif.), a House Government Reform subcommittee chairman who has held hearings on the Year 2000 problem since April 1996, said, "All of us have wondered where he is, since he is supposed to be the expert on all the good things in the 21st century—telecommunications, computers, technology."

Administration officials noted that President Clinton created a special White House council in February to lead the government's effort to prevent widespread computer problems in 2000 and said Gore was personally involved in recruiting John A. Koskinen, who has specialized in crisis management, to lead the council.

The vice president, Koskinen said, has "provided the support and leadership that we need at this stage. It doesn't do us a lot of good just to have people talking. My sense is to try to figure out the points of leverage, what are the issues that need to be raised and at what time."

Greg Simon, Gore's former chief domestic policy adviser and now a technology policy consultant in Washington, said public speeches by the vice president could "give out the impression that he's promising to fix everyone's [Year 2000] problem."

"It's more effective for him to work behind the scenes," Simon said.

Rep. Constance A. Morella (R-Md.), who called on the White House last year to designate a Year 2000 czar, said she hopes Koskinen can spur the government to work faster on computer fixes. Like some other lawmakers, she said the White House has not used its bully pulpit enough to educate the public about possible economic consequences or inconveniences.

"Ignoring this problem is a bigger risk than addressing it," Morella said.

Sen. Robert F. Bennett (R-Utah), who heads a special Senate committee and Senate Appropriations Committee Chairman Ted Stephens (R-Alaska) recently called for \$2.25 billion to be set aside to deal with the computer fix.

White House officials said Clinton is doing his part too. The president is planning an address on the issue in the next month or so, aides said. Clinton raised the Year 2000 problem with Latin American leaders at their summit and worked with British Prime Minister Tony Blair to ensure that the communique issued at the end of the recent meeting

of the Group of Eight major industrialized nations called attention to the computer challenge.

Asked about the Year 2000 problem at a Rose Garden event earlier this week, Clinton said the government plans to share information with other countries "and do everything we can do to make sure that when the new millennium starts, it's a happy event and not a cyberspace headache."

Gore is taking the issue seriously, Haas said.

"The other party has been quite open about its political strategy of tying any problems that occur specifically to the vice president," he said.

On the Year 2000 computer front, Haas said, "We have the right people in place, we have the right process in place and we do not expect major problems."

YEAR 2000 QUOTES FROM NATIONAL JOURNAL

"Gore has said virtually nothing about it. Indeed, he has rejected pleas by industry leaders and legislators to play a larger role. Back in January, Morella buttonholed Gore at a White House photo-op and urged him to lead the nation's repair effort. But Gore balked, saying it would take too much of his time. Morella recounted. And then, according to Morella, 'he paused and said, 'maybe you should do it.' Neil Munro, National Journal 6/20/98.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET: STATEMENT OF ADMINISTRATION POLICY, JUNE 23, 1998

(This statement has been coordinated by OMB with the concerned agencies.)

DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, FY 1999

(Sponsors: Livingston (R); Louisiana, Young (R); Florida.)

Year 2000 Reserve Funds

The Administration appreciates the emphasis that the Committee has placed on Year 2000 (Y2K) computer conversion activities. In the FY 1999 Budget, the President requested \$364 million for Y2K computer conversion. We recognize, however, that ensuring DoD compliance may require the flexibility to respond to unanticipated requirements. As such, we would intend to employ the contingent reserve set aside by the Committee only to the extent necessary, in order to ensure funds are available to address emerging needs.

The Administration would strongly oppose efforts to strike the emergency contingency fund from this bill. The value of the emergency mechanism approved by the House Appropriations Committee is the flexibility it provides in the event that we determine that additional resources are required. We have only 556 days until January 1, 2000. We want to solve this problem as soon as possible. Be delaying approval of emergency funding and reopening the issue of the use of the emergency spending authority, the House will create controversy and delay. We hope the House will reconsider.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET: STATEMENT OF ADMINISTRATION POLICY, JUNE 23, 1998

(This statement has been coordinated by OMB with the concerned agencies.)

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS BILL, FY 1999

(Sponsors: Livingston (R); Louisiana, Kolbe (R); Arizona.)

Year 2000 Computer Conversion

The Administration appreciates the emphasis that the Committee has placed on year 2000 (Y2K) computer conversion activities. OMB will continue to assist all agencies

in ensuring that adequate resources are available to address this critical issue. In the FY 1999 Budget, the President has requested more than \$1 billion for Y2K computer conversion. In addition, the budget anticipated that additional requirements would emerge over the course of the year and included an allowance for emergencies and other unanticipated needs.

At this time, we believe that the resource levels included in the President's budget will fully address Y2K computer conversion requirements Government-wide. However, as we learn more about how to address this problem, we expect that ensuring Government-wide compliance will require flexibility to respond to unanticipated requirements. To the extent such unanticipated requirements are identified, it will be essential to make that funding available quickly. It will truly be emergency funding. The emergency mechanism recently approved by the House Appropriations Committee provides such flexibility.

It is our understanding that when the House Rules Committee meets today to take up the Defense and Treasury/General Government appropriations bills, it will consider rules that would strip the emergency funding mechanism from both bills. This regrettable action will not help agencies move forward in addressing this problem. We note that the Committee bill allocates funds from the emergency reserve for Treasury and other agency Year 2000 (Y2K) needs. If the emergency reserve is not funded, the Congress will need to find other ways to fund Treasury's critical Y2K needs.

The value of the emergency mechanism approved by the House Appropriations Committee is the flexibility it provides in the event that we determine that additional resources are required. We have only 556 days until January 1, 2000. We want to solve this problem as soon as possible. Delaying approval of emergency funding and reopening the issue of the use of the emergency spending authority would create controversy and delay. We hope that the House will reconsider.

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

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

Mr. Speaker, we have a case here of Alice in Wonderland. The Republican Majority has decided that two wrongs do make a right. They do not like the fact that the administration has not asked for enough money for the year 2000, so they are not going to give the administration any money to fix the year 2000. This is an extraordinary result.

Mr. Speaker, let me state from the outset that it is my intention to oppose this rule. As my colleagues know, I am a consistent supporter of a strong national defense and it is not my practice to oppose rules dealing with defense matters. But in this case I must oppose this rule because I believe the Committee on Rules has made a very serious error, perhaps one of the most irresponsible actions they will ever take, by stripping all the funds for the year 2000 computer problem and for information systems security at the Department of Defense.

This is one of the most reckless actions my Republican colleagues have taken in the 3½ years that they have had control of this body. And for those of us who do concern ourselves with na-

tional security, the ramifications of this action are quite frankly very disturbing.

Mr. Speaker, the Committee on Appropriations said in the report to accompany this important bill that there are only 18 months remaining before we are faced with the possibility that our military may not be mission capable because of the year 2000 date change.

The report states, and I quote from the committee report:

The committee believes it would be irresponsible not to make available as soon as possible additional funding which could be used during fiscal year 1999 to implement and test essential fixes to national security-related information systems, as well as to develop contingency plans to assure continuity of essential operations in the event needed fixes are not in place.

The Republican majority on the Committee on Appropriations did exactly the right thing by making available \$1.6 billion for the year 2000 fix for the Department of Defense and intelligence agencies and by designating those funds as emergency spending.

But after the committee had reported this bill, the Republican leadership instructed the Republican majority on the Committee on Rules to strip this critical funding from the bill and, in doing so, ignore the importance of making these monies available as soon as possible.

Mr. Speaker, my Republican colleagues are going to say, and we just heard them say that they have removed these funds because the President did not request enough money, because they are budget-busting funds, and because we can come back later this year and consider a supplemental appropriation that will include money for the year 2000 fix.

My answer to the Republican majority is as follows: It does not matter if the President did not request enough money. We need these funds to fix the well over 2 million computers and over 25,000 distinct computer systems within the Department of Defense that are embedded in weapons systems, are integral parts of command and control systems, satellite systems, the Global Positioning System, and on and on.

So I would ask, how can this money be considered budget-busting? I think this money is needed to fund a true emergency that will address the critical issue of ensuring that the 2,800 mission-critical computer networks within the Department of Defense and the intelligence community that contain an estimated 30 billion program instructions are, in fact, fixed.

During the hearing on this rule yesterday, the chairman of the Committee on Rules, the gentleman from New York (Mr. SOLOMON) announced that the funds for the Defense Department year 2000 fix, as well as year 2000 funds for every other department and agency of the Federal Government, would be included in a supplemental appropriation to be considered later in the year. He stated that those supplemental

funds would be offset with domestic spending cuts.

Mr. Speaker, the plan announced by the gentleman from New York for addressing the year 2000 problem is a recipe for disaster.

First of all, Mr. Speaker, we may not be able to consider a supplemental appropriation at a later date, because the date is June 24 and we are adjourning tomorrow for 2 weeks, and we have for all intents and purposes only 30 days or so in which to complete all the business required of us before we go home to face the voters. I, for one, do not want to face the voters in my Congressional District having failed to address this issue.

Mr. Speaker, I want every Member to be perfectly clear what is going to happen because the Republican leadership has stripped year 2000 money from this bill and from the Treasury-Postal appropriations legislation. If such a supplemental as the gentleman from New York (Mr. SOLOMON) envisions ever sees the light of day, it should be understood that the money in the supplemental will not necessarily be designated as emergency spending. This is an important point because as non-emergency spending, year 2000 funds totaling \$3.85 billion will have to be offset, and they will be offset from domestic spending.

What the gentleman from New York has offered is a no-win proposition, because \$3.85 billion in additional domestic cuts cannot easily happen. The gentleman's plan, which I assume is the Republican leadership's plan, is a plan for failure. The Republican leadership is playing a dangerous game by stripping these funds from the Defense and Treasury-Postal appropriations bills, and for that reason, I intend to oppose this rule.

We have an opportunity in this rule to make the funds available now to the Department of Defense and to the intelligence community which will allow them to find the programmers that can be trusted to work on these systems so that we will know that we have done our part in protecting our national security as the clock ticks towards January 1, 2000. But we can only do so, Mr. Speaker, by restoring the funds to the bill under an emergency designation.

Mr. Speaker, I urge every Member of this body to act responsibly and to vote "no" on this rule.

The Republicans are telling this body, "Trust us. Trust us." Now, what we know as the Defense appropriations bill has to pass. We are not going to leave here without a Defense appropriations bill. We are not going to leave here without a Treasury appropriations bill. But we can leave here without a supplemental bill. There is no reason a supplemental bill has to pass prior to October 1, 1998. And there is no reason to believe that a supplemental bill constructed with additional domestic offsets is going to pass this Congress.

Mr. Speaker, excusing the expression, our colleagues on the other side are

playing Russian roulette, Russian roulette with our national security, because they are not willing to fund in this bill the money to repair and to make sure that our computer systems are adequate and are ready for the year 2000.

Mr. Speaker, this is a good bill, otherwise. And it is one that deserves the support of every Member. We have a commitment to our military forces to ensure that they have the best equipment available today and that work proceeds to ensure that they will have the best available in the years to come. Equipment, pay raises, operation and management, planning and logistics are all part of this bill that is designed to ensure that our Nation is strong and that our Nation is secure.

Mr. Speaker, this bill does not do all of the job. By deleting the emergency funding for the year 2000 fix, my Republican colleagues have stuck their head in the sand. They may say the President has stuck his head in the sand, but he has got a Republican ostrich standing right next to him, deep, deep in the sand.

This bill will leave us exposed, and it is for that reason that I oppose this rule.

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

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

Mr. Speaker, I am ready to concede that it is clear that the majority is a lot better at responsibility than it is at rhetoric. For that reason we are taking a fiscally responsive approach to this matter.

Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Glens Falls, New York (Mr. SOLOMON), chairman of the Committee on Rules, to demonstrate that point.

Mr. SOLOMON. Mr. Speaker, I seldom get upset, and even when I do, I smile about it. I am trying not to smile about it, because there is nothing more than politics being played here today.

Mr. Speaker, we have a problem with the computers in 2000. And, yes, it has to be dealt with and it has to be dealt with in a timely manner. But the truth is, after I hear the gentleman from Texas (Mr. FROST) my good friend, and my very good friend, stand up here and start blaming Republicans, turning this into some kind of a political debate over this issue, I just get terribly upset.

Now, if they were sincere on that side of the aisle, the President of the United States, whether we like him or do not like him, would have asked for this. And when we read the administration's position on this bill, they never asked for it because they know it is part of an ongoing process that we are putting together, not only with the Defense Department but with every other department of government where we have 25 million computers out there. So to stand up here and try to make it a political issue in my opinion is just irresponsible nonsense.

Now, the chairman of the Subcommittee on National Security of the Committee on Appropriations, the gentleman from Florida (Mr. YOUNG), I see him over there, is one of the most outstanding and respected Members of this body who has done yeoman's work on this, one of the most important bills that will come before this Chamber in any given day in any given year.

Even though we are severely underfunded in the Defense appropriations bill, as we are in the Defense authorization bill this year, we are probably \$40 billion a year short if we are going to provide adequate research and development and procurement for our young men and women who, God forbid, ever have to go into combat, we ought to give them the very best we can. And we are not doing that, and we should all be severely criticized for it. But under the budgetary constraints that the gentleman from Florida has to live with, this is a very, very important measure.

Let me also thank him for adopting and agreeing to have me self-execute into the bill a Solomon amendment which would prohibit the Department of Defense from contracting or subcontracting with people who have been convicted of unlawful manufacture of the sale of Congressional Medals of Honor.

That has been happening in this country. There has been an industry that is actually manufacturing and selling these to people who do not deserve them, and they are running around flashing their Congressional Medals of Honor around this country. That is outrageous.

The fact is that my amendment would prohibit that company and any other company which is convicted of manufacturing these medals and then selling them on the public market from doing any business with the Department of Defense over the next 15 years.

Right now, there is no law against it. There is a very, very minor fine. This particular industry was fined a very small amount, something like \$5,000. Well, it ought to be a serious offense for doing that. And this amendment would prohibit it. I thank the gentleman for accepting my amendment.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, sometimes Members of the minority have to take time to spell out what the majority is doing, because it appears that the thought police in the majority caucus prevent many people on the majority side from expressing what it is that they are really doing, even those who disagree with what they are doing.

The committee originally decided that this computer 2000 problem was so severe that it justified being handled as an emergency, and they put the money in this bill and in the Treasury-Postal bill to deal with it. Now, because of an internal revolution once again in the Republican Caucus, this emergency money is being taken out and we are

being told: "Well, do not worry, we are going to gather it all together in some supplemental bill. We will deal with it at some future time. We do not know how we will pay for it, but it will be out of mandatory programs."

They leave us wondering, number one, whether they will ever be able to pass that emergency legislation at all. Secondly, they leave us wondering if they do target mandatory programs, whether it will be Medicare or whether it will be Social Security or what programs they will go after in order to fund this emergency when they get around to feeling that it is really an emergency.

Mr. Speaker, I want to point out that there was a very good reason why the committee put this money in in the first place. It is a "little" problem if all of a sudden in the year 2000 our FAA computers go dark. I would not want to be in a plane flying around the country that day. It is going to be a "little bit" of a problem if Social Security cannot write its checks. It is going to be a "little bit" of a problem if the veterans all of the sudden do not get their checks. It is going to be a problem if the health care providers do not get their Medicare checks from the government.

And as far as the Defense Department is concerned, we are talking about missile-critical systems. The NORAD ballistic missile early-warning system relies on computers and they could have a serious problem. The Global Positioning System is another system that could be in trouble.

□ 1715

The military pay system could be in trouble. As Deputy Defense Secretary Hamre testified, "failure of a microchip in a critical, large or dangerous piece of machinery, loss of air pressure in an F-15 or submerged submarines can be devastating or even life threatening."

And I would ask, what happens about Russian concerns over the year Y2K problem? What happens if the Russians' early warning attack system goes haywire on January 1, 2000? How will they respond? Will they think that we caused the problem? Are their offensive nuclear systems safe from computer malfunction? Well, I tell my colleagues, we do not know. Because we do not know, this money should stay in this bill, and that is why the responsible vote for national security is to vote against this rule.

Mr. FROST. Mr. Speaker, I yield 3 minutes and 30 seconds to the gentleman from Colorado (Mr. SKAGGS).

Mr. SKAGGS. Mr. Speaker, I thank the gentleman very much for yielding me the time.

When we get into the discussion of this bill, one provision that will come up for review, I think, is section 8106, which will limit the expenditure of funds in this bill for offensive military purposes except when taken in accordance with Article I, section 8 of the

Constitution. Members probably realize this is the War Powers Clause, which vests in Congress the authority to decide when the United States commences, initiates offensive military action.

I believe the gentleman from Florida (Mr. GOSS) in his remarks suggested this section was referred to the War Powers Act. It is, in fact, the constitutional provision—the War Powers Clause.

I just wanted to take a minute on the rule to lay a bit of the groundwork for this in light of recent practices by Presidents of the United States.

Members have said, why do we need to do this? We are sort of restating the Constitution. I think it is very instructive about the need for this body and this Congress to reassert its position regarding war powers, if we review what this administration's and the preceding administration's positions have been with regard to the really unrestrained authority, as they see it, of the President of the United States to initiate military action in behalf of the Nation.

For example, when I pressed the Secretary of State during her appropriations hearing earlier in this year for an explanation of the authority that the administration believed it had then to initiate further attacks against Iraq, we were provided, finally, last week with the Secretary's explanation.

A very telling provision in that submission for the RECORD reads as follows:

These provisions should be understood in the light of the President's constitutional authority as Commander in Chief to use armed forces to protect our national interests.

This is about as expansive a definition of presidential authority under the Constitution as is imaginable and, I suggest, is a very dangerous assertion by the executive, if left unchallenged by the legislative branch.

Yesterday we received a statement of administration policy threatening a veto of this bill if section 8106 remains in it. And in that statement of administration policy, the following statement appears. And I quote: "The President must be able to act decisively to protect U.S. national security and foreign policy interests."

In other words, the administration is asserting that it has authority to use the military forces of the United States according to its definitions of national security and foreign policy interests.

I think Members will understand that this runs afoul of the limitation on the Commander in Chief's powers and those war powers reserved to the Congress by the Constitution.

Finally, we cite frequently President Bush's actions before the Persian Gulf War, in coming to Congress and the vote that we took at that time. Then, President Bush said, and I quote, "I feel I have the authority to fully implement the U.N. resolutions."

As he signed the resolution authorizing the Persian Gulf War, he said,

My request for congressional support did not, and my signing this resolution does not constitute any change in the longstanding positions on either the President's constitutional authority to use the armed forces to defend vital U.S. interests.

So this is a recurring problem. It is past time that the legislative branch reasserted its constitutional authority.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the gentleman from Greater San Dimas, California (Mr. DREIER), very distinguished vice chairman of the Committee on Rules.

Mr. DREIER. Mr. Speaker, I thank my friend from Sanibel for yielding me this time.

I am very pleased that the chairman of the Committee on Rules is still here in the Chamber because I would like to rise in very strong support of this rule, because I think that if one were to look at the preamble of the U.S. Constitution, it is very clear that this appropriation bill that we are going to consider is the single most important appropriation bill that we will ever consider here.

Why? Because providing for the common defense, as stated in the preamble, is our top priority. We know that there are a wide range of issues with which we deal in this institution, ranging from health care, education, a wide range of things, all of which, all of which can be dealt with by local and State governments and individuals in many cases. But when it comes to our Nation's security, there is no level of government, city, county, State, and individuals cannot unilaterally provide for our common defense. So that is why the measure which the gentleman from Florida (Mr. YOUNG) will be bringing forward as this rule is passed is the single most important appropriation bill that the Congress considers.

Having said that, I believe that there are a number of things that need to be brought to light. I know that the gentleman from Florida (Mr. YOUNG), chairman, and the ranking minority member, the gentleman from Pennsylvania (Mr. MURTHA), have spent a great deal of time working, thoughtfully, in a bipartisan way on this. But I am one who believes that as we have looked at national security threats that have come to the forefront just over the past several months, whether it was the potential transfer of technology to the People's Republic of China, the nuclear proliferation and testing that has taken place in India and Pakistan, if we look at the very, very dangerous Korean peninsula, we look at developments in the Middle East, it is obvious that we need to do what we can to enhance our defense capabilities.

As was said by the ranking minority member of the subcommittee before the Committee on Rules, he has talked time and time again with the President. The President calls for the deployment of troops to deal with very

serious situations throughout the world, and yet we do not always provide the necessary resources for those troops.

I was told not long ago that we have troops in 65 countries throughout the world. Yet since we have seen the demise of the Soviet Union, we have cut back, we have cut back dramatically.

We all are very pleased that the Soviet bear is now history, but we do still live in a very dangerous world. That is why I strongly support the work of the gentleman from Florida (Mr. YOUNG) and the gentleman from Pennsylvania (Mr. MURTHA) and then some.

I hope very much that we will recognize that we can do more. But as we look at this very important question that has come to the forefront on the so-called Y2K problem and the argument that was provided that funding that was necessary was going to be in the defense appropriations bill and the Treasury/postal appropriations bill, it is obvious that the problem is a very, very serious one.

If we look at the statement of administration policy that came out, first on the DOD appropriation bill, the chairman of the Intelligence Committee, the gentleman from Florida (Mr. GOSS) has provided me with this; it is very important in looking at the Y2K issue. The statement from the administration is: The administration appreciates the emphasis that the committee has placed on Year 2000, the Y2K computer conversion activities.

And so obviously there is recognition and support for that. But then when one looks at the Treasury and general government appropriations bill for fiscal year 1999, on this same issue the administration says: At this time we believe that the resource levels included in the President's budget will fully address Y2K computer conversion requirements governmentwide.

Well, Mr. Speaker, one of the reasons that we have made the decision that we want to do this in a supplemental is that most everyone has acknowledged that the governmentwide problem impacts all 13 of the appropriations bills. This is a very, very far-reaching issue. There are reports coming right now that a particular airline will in fact not fly any aircraft on the first day of the year 2000. There are reports that we could potentially see, we know all kinds of very dangerous things that could happen, but possibly we could see a blockage of the flow of fuel throughout this country and other parts of the world.

Then, of course, as came up during the discussion on the DOD appropriations bill in the Committee on Rules, the potential problem that could exist with computers in other parts of the world, in fact, with countries that have nuclear capability. This is a very, very serious and frightening issue, and that is why, while we see this statement made in the Treasury report of administration policy that they are satisfied with what was there in the administration's budget, we believe very strongly

that this needs to be looked at governmentwide in an even more serious way and a more intense way.

Now, a statement was made earlier by one of my colleagues that it has been decided that funding for this will come from mandatory spending, that decision has not yet been made.

I will say that while the President has said that he wants every nickel of the budget surplus to be expended on Social Security, the thing that concerns us greatly is that some who are looking to deal with this issue simply want it to come from the surplus. We do not know exactly how it is going to be paid for yet, whether it is mandatory or discretionary. But it seems to me that we will be doing everything that we possibly can to deal as responsibly as possible with this.

I thank my friend for yielding me this time, and I urge support of this rule and the measure.

Mr. FROST. Mr. Speaker, I yield myself 30 seconds.

I, of course, was quoting the chairman of the Committee on Rules when I said this was going to come out of mandatory spending. My friends over there, I guess, have adopted the ostrich as the official bird of the Republican Party because they want to stick their head in the sand. They do not want to appropriate any money for this problem. It is a very, very interesting position.

Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Ms. STABENOW).

Ms. STABENOW. Mr. Speaker, I rise today to urge my colleagues to vote no on this DOD rule because of the serious omission of funding for the Year 2000 problem.

We cannot provide for our common defense if the DOD computers do not work on January 1, 2000. At the DOD, we have computers and microchips that operate everything from elevators to guided missiles. DOD relies on computers to do payroll processing, retirement benefits, operate weapons systems, order supplies, the list goes on and on. This is just in one important department. The list goes on throughout the Federal Government as well as the private sector.

If computer systems were to fail, it would not only compromise the DOD's ability to run its day-to-day operations but it would compromise the Nation's security as well.

DOD is currently on OMB's watch list of agencies which must do a better job in fixing their Y2K problem. This rule, this budget, without necessary funding, does not help.

We need to be focusing on tackling the problem instead of playing games. And I am very concerned. This issue affects each and every one of the men and women and children in this country. At this point in time, what we have are folks playing games on the issue and not being willing to address it.

□ 1730

This should not, Mr. Speaker, be a partisan issue. It is an issue that affects all of us. We will all suffer the consequences if we do not address it. It is irresponsible to proceed on this rule without the necessary funding for the year 2000 problem. I would urge very strongly a "no" vote on the rule.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. HEFNER), a member of the Committee on Appropriations.

Mr. HEFNER. Mr. Chairman, unfortunately, we have got an excellent defense bill. Our chairman, the gentleman from Florida (Mr. YOUNG), and the gentleman from Pennsylvania (Mr. MURTHA), has done a tremendous job.

But the chairman of the Committee on Rules made a statement a while ago that we are playing politics with the Nation's defense, but this goes back beyond this bill. This goes back to when we were considering the budget. We had a rule that came in here on a budget, that there were two budgets that were offered, and they eliminated one of the budgets that could be offered because they were afraid it was going to pass.

Then we beat our chest and said we have balanced the budget. We have sent out press releases. We have finally accomplished a balanced budget.

Now here we are. We set caps. We put caps on this budget, and we are trying to find ways to break the caps. The gentleman from Wisconsin (Mr. Neumann) over here who is a strong supporter of the Kasich budget, they are trying to break the agreement that they made on the balanced budget and the Kasich budget.

If this is a problem that has to be fixed, it has to be fixed. It is something that is going to come. We do not know the exact day, but it is coming. My colleagues talk about playing politics with it. This is an unfortunate situation.

I plan to vote for the budget because I believe that this is a good bill. But we have played too many games with this budget, and it is going to come back to haunt us because we are not going to be able to maintain a balanced budget and stay within these caps unless you cut some of the programs that are so vital to the American people.

I do not believe that the American people want to cut Medicare. I do not believe they want to cut lunch programs for kids, and Medicaid. It is just not going to happen. We are going to find ourselves in a situation where we are either going to have to have a tremendous continuing resolution or close the government down.

Unfortunately, this debate has to come on this defense bill, but it is what you get into when you play games with big numbers. It is like the old saying goes: Figures do not lie, but liars figure.

Mr. GOSS. Mr. Speaker, may I inquire what the allowances of time might be for both sides.

The SPEAKER pro tempore. The gentleman from Texas (Mr. FROST) has 11 minutes remaining. The gentleman from Florida (Mr. GOSS) has 13 minutes remaining.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut (Ms. DELAURO).

Ms. DeLAURO. Mr. Speaker, I rise in strong opposition to the rule. Striking the bill's provisions providing \$1.6 billion in emergency funding for the year 2000 computer crisis is truly a very dangerous move. Unless corrected on time, the year 2000 date change will cause malfunctions or the total shutdown of the Pentagon's computer network, with devastating consequences.

The communications system linking United States forces together across the globe so that they can respond to threats to our security at any time that is at risk. The basic navigational system used by U.S. military and civilians around the world involved in commercial trade and travel are jeopardized. The payroll system that ensures that millions of soldiers and military retirees receive compensation for the sacrifices that they have made to protect our freedom, these are threatened.

The GAO reports said that at the current rate it will take 3½ years for the Pentagon to correct its year 2000 problems. But there are only 18 months until the first day of the year 2000. We need to speed up the progress.

This should not be a political issue. Once again, my Republican colleagues do not seem to get the message. Once again, they play politics with a deadly serious issue. To appease the right wing of their party, they are truly willing to compromise. Compromise on what? The future safety of the entire Nation.

Stop the games. Protect our Nation. I urge my colleagues to oppose the rule.

Mr. GOSS. Mr. Speaker, by way of introduction, I want to read a quote from the National Journal. And I am quoting. It may possibly be of interest to some of our guests in the room.

"Gore has said virtually nothing about it. Indeed, he has rejected pleas by industry leaders and legislators to play a larger role." We are talking about year 2000 here. "Back in January, Morella buttonholed Gore at a White House photo op and urged him to lead the Nation's repair effort, but Gore balked, saying it would take too much of his time, Morella recounted. And then, according to Morella, he paused and said 'Maybe you should do it.'"

Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Speaker, I know the Vice President was joshing when he put it all in my hands. On the other hand, it has been well over 2 years that we in Congress, on two subcommittees in particular, have been having hearings.

When you take the number of hearings that we have had on the mother of

all computer glitches, the year 2000 need for compliance in all of our computers, then with all of the committees that have had hearings, I think the total is something like 25 hearings.

In January I had the honor of giving the radio address in response to the President's address, in which I asked the President to use the bully pulpit, to issue an executive order to appoint a year 2000 computer czar. Finally, in February, John Koskinen was appointed. He started in March. He is trying very hard to spend his time getting government compliance as well as looking at the private sector, State and local government, as well as internationally.

But, my friends, we are moving too slowly. We have legislatively, in Congress, had on bills the idea of quarterly reports, a CIO, a national strategy, and now we are going to accelerate it with monthly reports. But the point is this has been in the offing. The President has not requested the money for this.

What will be happening is not that the year 2000 will be forgotten, because it cannot be. It is an unrelenting deadline that we are going to have to face. We are going to have to face it also with contingency plans.

So being crafted will be a supplemental appropriation to cover not only Department of Defense and its needs for compliance, which are very critical, but to cover all of the other agencies of government. We will be able to look at that and know that this is the money that is going to be going, probably \$5 billion, to cover what is needed with all of the agencies.

One final point is that, when the original request of the agencies was made in terms of what will the cost be of putting us into compliance, \$2.3 billion was the estimate; and now the estimate, my friends, is \$5 billion. I will submit that that still is probably not going to cover the total costs.

So we need to move on it, but please do not think that Congress has not been there on the forefront time and time again, over and over again, urging that we face this problem and that we expeditiously lead the world in terms of going into compliance. It also is going to affect computer chips, which may mean high-rise buildings, elevators, security systems, as well as our major DoD systems, too.

So I would submit it is not forgotten. It will be coming up in a supplemental appropriations bill, and Congress can say we have been leading the way.

Mr. FROST. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, this reminds me of the white rabbit in Alice in Wonderland. "I'm late. I'm late. I'm late for a very important date. Hello. Good-bye. Hello. Good-bye. I'm late." The Republicans are saying they are late, but they do not want to put any money in the bill to take care of the problem. This is extraordinary.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY of Oregon. Mr. Speaker, I rise in opposition to this rule which I do not think moves us forward, but in fact takes us a step backwards in addressing an issue that is vital to our national security.

The year 2000 problem is a far cry from some Orson Welles spoof. Rather, the inability of many government and in fact private sector computers to correctly recognize the date after the year 2000 is a problem that can have dramatic impacts on our financial markets, payments of Social Security, Medicare benefits, and certainly our national defense system.

The Committee on Appropriations wisely made the decision to provide \$1.6 billion for the so-called Y2K reprogramming in this legislation for a very good reason. If the computer problems are not remedied, the change could cause total shutdown of many systems upon which the defense community relies.

There are approximately 2,800 critical computer networks and systems at DoD. So far, less than 30 percent of those systems have had the year 2000 problem fixed, including those that control the Global Positioning System, the ballistic missile attack early warning system. We have heard all of these before.

Some of my colleagues have suggested that we repackage these funds into a so-called emergency spending bill much like the one introduced earlier this year that, frankly, has been sitting untouched for 6 months. We cannot wait 6 months. We cannot wait 6 weeks. Frankly, Mr. Speaker, we need to address this problem now. The GAO estimates at current pace it will take more than 3½ years for DoD to fix the problem in the remainder of its systems.

I urge my colleagues to oppose this rule. We cannot wait. This critical problem needs to be addressed now. I urge a "no" vote on the rule.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Florida (Mr. YOUNG), chairman of the subcommittee, who is going to perform on this and I hope to tell us the merits of this legislation.

Mr. YOUNG of Florida. Mr. Speaker, I appreciate this opportunity to address the issue of the rule. Following adoption of the rule, we are going to be debating a lot of the issues about the bill itself.

When we get into the bill itself shortly and, hopefully, my colleagues will hear from me and others that this is a good bill as far as it goes, but it does not go far enough. There are many, many requirements for our own national security effort that we are not meeting in this bill because of the lack of funds. But we need to get this rule adopted so that we can get to this bill, get it into conference, and do the best we can to provide for a strong national security.

I want to note with appreciation the gentleman on the minority side who

has presented their case on this rule today, because he has always been a strong supporter of national defense. Some of those votes were fairly close on occasion. I appreciate that support.

But now to have this fuss on this rule about the Y2K problem I think is maybe just not "I'm late, I'm late, I'm late," as the gentleman from Texas said, but the fact is that maybe someone else is late, but not necessarily us.

When the subcommittee met, the gentleman from Pennsylvania (Mr. MURTHA) and I worked together for weeks and weeks and weeks to present a bill that we thought met the requirements of the national security requirements with the few dollars available.

We decided that the Y2K problem was important. We were, frankly, amazed that we had no requests from the administration for the Y2K solution. We do not know what the solution is today, but we know we better get started sooner rather than later, or we are really going to be "I'm late, I'm late, I'm late" as the gentleman from Texas (Mr. FROST) has suggested.

So we did this. The full committee agreed to this. There was some debate about it. The full committee agreed to it. But subsequently the Committee on Rules decided, along with the leadership of the majority party, that the Y2K problem in the Defense bill, and the Y2K problem provided for in the Treasury, Postal bill and other defense issues should be taken from the respective bills and put into one freestanding bill that would call attention to the fact that there was a serious problem with the Y2K issue. At the stroke of midnight on December 31, 1999, we are going to encounter a serious problem, if in fact we do not solve the problem prior to that time.

□ 1745

I listened to the speech of the gentleman from Wisconsin (Mr. OBEY). It was basically the same speech that I made in the committee and at the Committee on Rules and at other places, and I agree. The gentleman from Wisconsin and I do not agree all that often, but I agree with the things that he said, because he said the same things I had been saying.

I will make it a little more of a concern for Members. In the Defense Department, there are approximately 2 million computers. There are 25,000 computer systems in the Defense Department. Two thousand eight hundred of those computer systems are mission critical. Only about a third of those are able to deal with the Y2K problem. So we do have to move ahead and settle this issue. What we need to do is adopt this rule, get this bill passed in the House, get in the conference and make way for the freestanding bill that is going to provide the money for Y2K and other emergency issues.

Let us not make this a political football. This defense bill has not been political since I have been here, since the gentleman from Pennsylvania (Mr.

MURTHA) was chairman, since I have been chairman. It has never been political. National defense, national security, and intelligence should never be political. The interest of the Nation has got to be above the interest of the politicians.

Mr. Speaker, I say, let us pass the previous question, let us pass the rule, let us get into the bill and let us move along so that we can then get to the freestanding bill that will provide for the emergency funding that we need to address this emergency issue.

Mr. FROST. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, people watching this debate must be scratching their heads and saying, now, these people on the other side of the aisle, they say there is a big problem here, there is a real big problem but they do not want to vote any money to correct it. What is going on here? I sympathize with folks who are viewing this debate. There is something very missing. What is missing is money to solve this problem now that we all recognize.

Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. MURTHA), the ranking member on the Subcommittee on National Security and one of the true experts and champions of defense in this House.

Mr. MURTHA. Mr. Speaker, I appreciate the ability to address what I consider one of the serious problems that we face in defense. The chairman just said, and I agree with him completely, we are far short of the amount of money we need in order to address the tempo of operations that the President has set for this country. I agree with the fact that we have to deploy troops, that we have to lead throughout the world. But, on the other hand, I worry when we do not have enough money in order to fund the tempo of operations, and consequently our readiness is slipping. But we are even shorter than that. We are \$10 billion short in procurement. Technology is what did so well in the Gulf War. We have trucks that are out of date, we have airplanes that are out of date, we have helicopters out of date. So we have real problems. But one of the most serious problems that we face today is the Y2K problem if we do not address this problem. We have, as the chairman just stated, 2,800 mission critical systems in the Defense Department. It would take them 3 years at the rate we are going in order to correct those problems. We sat down in subcommittee, and I do not believe we have had a vote for 5 years in that subcommittee. We have always worked it out, unanimously, so that everybody agreed. We listened to new members, we listened to members that had been there and we have always come to an agreement without a vote over the 5-year period. In this particular case, the President did not ask for this money, and I think he made a mistake. He should have asked for the money. But we believe, as we have many times in the past, that we not

only need the money that is there, we need more money, and one of the things that has to be done is to fix this problem.

How do we fix the problem? We do not have any extra money. We could not take money out of recruiting. They are 7,000 short in the Navy. The Army is having trouble recruiting. They are paying a bonus to the Air Force of \$100,000 now over a 5-year period in order to recruit. There is no money anyplace else. So we believe it was enough of an emergency that we should declare an emergency and make the request, as we have done in the 20 something years that we have been on the committee many, many times, we have made emergency decisions, declared emergencies and put extra money in because we felt it was important to the security of this great country. We unanimously agreed to that. We went to the full committee, and the full committee almost unanimously agreed.

What worries me is that if we pass this rule, we will then be in a position where we have to depend on somebody else later on solving the problem. I have heard it was not going to be offset and I have heard it is going to be offset.

I think we ought to have a freestanding vote, and I think we ought to let the Committee on Rules go back and give us a rule where we can vote on whether this should be an emergency, and I think we would find a majority of the Members in this House would agree, Republicans and Democrats, in a bipartisan manner would agree that this should be an emergency situation, that we should vote the almost \$2 billion for Y2K and for computer security, both those being essential to the many mission critical systems that we have available in this country today.

Mr. Speaker, I would ask the Members of the House to think hard, to vote this rule down, to let the Committee on Rules go back and set up another rule and give us a vote, let us make a decision without voting this down and then later on having to depend on somebody else to maybe offset it from programs that we do not like so the Defense Department does not get what it wants and we offset things that are already cut to the bone. I would request the Members to vote this rule down, and then consider a separate vote on the extra money.

Mr. FROST. Mr. Speaker, I yield myself the balance of my time. We have heard the very articulate statement of the ranking member of the Subcommittee on National Security, one of the truly bipartisan members when it comes to defense. It is a travesty, it is ridiculous that this bill does not include money to address the year 2000 problem. Republicans should join with Democrats in rejecting this rule. Vote "no" on the rule and fund the year 2000 problem now.

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

Mr. Speaker, I would simply say that the ranking member has indeed made a point of view about the urgency of the need for dealing with the Y2K problem. In my opening remarks, I stated that we indeed have plans to provide dollars to deal with those issues despite the fact that the administration seems to have overlooked this matter. So I guess I would simply say that the lack of planning on the part of the administration should not precipitate a crisis on the majority side of the House, or in the House at all, and it will not. We have an orderly and fiscally responsible way to proceed to deal with Y2K, and I would daresay our track record on Y2K is a whole lot better than the administration's so far, and I think that that has been carefully articulated and accurately articulated by the distinguished chairman of the Committee on Rules, the vice chairman of the Committee on Rules reading from the administration's statement, and from the distinguished chairman of the appropriations subcommittee who is the co-author of this legislation.

So it seems to me that we all agree that there is a need to deal with a problem that the administration has overlooked and we have indeed said that we are going to do it in a thoughtful, orderly and responsible way; and, therefore, there is no reason at all to vote against the rule.

There is, however, a problem. But the dime is not the problem. Getting off the dime is the problem. Those who would like to help the majority on this side might like to communicate with the White House about getting off the dime and helping us deal with Y2K, because indeed it is a serious problem. Behind all of the Y2K issue which has come up, we know that there is a very serious, necessary piece of legislation for this body, and that is appropriating sufficient funds for the defense of our Nation and our national security, and that includes our intelligence capabilities as well. This bill, I believe, does that well. I believe the rule is certainly an appropriate rule for the circumstances that we have that deal with the issue. I think that all parties have understood that we have a plan to deal with the money issue for the Y2K on a governmentwide basis that will solve not only the problem for the Defense Department but for those other computers that run those elevators and airplanes and other things that have been talked about.

All of this having been said, I believe that the right statement, that we cannot wait, is correct. We cannot wait. We should pass this rule right now, and get on with the debate, and then pass the defense appropriations bill. Therefore, I urge support for the rule.

Mr. RODRIGUEZ. Mr. Speaker, I rise to protest the political game this rule plays on this most crucial of deadlines: the Year 2000.

We can fix this problem. There is a winning solution. But we must address it today.

The American people have seen us hold emergency bills hostage, even shut down the government over certain disputes.

This is one area where America can no longer tolerate delay. This is a critical emergency, as important as any natural disaster. It is a matter of national security that we directly appropriate money to fix the Year 2000 problem.

In addition to the technical problems, we have a perception problem. If the American people think there is a problem, they will react accordingly and we could face a national panic.

I urge opposing this rule, unless we allow the immediate appropriation of funds to fix this problem as soon as we can. We are already almost out of time.

Mr. GOSS. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

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

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

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 221, nays 201, not voting 11, as follows:

[Roll No. 265]

YEAS—221

Aderholt	Doolittle	Johnson, Sam
Archer	Dreier	Jones
Army	Duncan	Kasich
Bachus	Dunn	Kelly
Baker	Ehlers	Kim
Ballenger	Ehrlich	King (NY)
Barr	Emerson	Kingston
Barrett (NE)	English	Klug
Bartlett	Ensign	Knollenberg
Barton	Everett	Kolbe
Bass	Ewing	LaHood
Bateman	Foley	Largent
Bilbray	Forbes	Latham
Bilirakis	Fossella	LaTourette
Bliley	Fowler	Lazio
Blunt	Fox	Leach
Boehrlert	Franks (NJ)	Lewis (CA)
Boehner	Frelinghuysen	Lewis (KY)
Bonilla	Gallegly	Linder
Bono	Ganske	Livingston
Brady (TX)	Gekas	LoBiondo
Bryant	Gibbons	Lucas
Bunning	Gilchrest	McCollum
Burr	Gillmor	McCreary
Burton	Gilman	McHugh
Buyer	Goodlatte	McInnis
Callahan	Goodling	McIntosh
Calvert	Goss	McKeon
Camp	Graham	Metcalf
Campbell	Granger	Mica
Canady	Greenwood	Miller (FL)
Castle	Gutknecht	Mink
Chabot	Hansen	Moran (KS)
Chambliss	Hastert	Morella
Chenoweth	Hastings (WA)	Myrick
Christensen	Hayworth	Nethercutt
Coble	Hefley	Neumann
Coburn	Herger	Ney
Collins	Hill	Northup
Combest	Hilleary	Norwood
Cook	Hobson	Nussle
Cooksey	Hoekstra	Oxley
Cox	Horn	Packard
Crane	Hostettler	Pappas
Crapo	Houghton	Parker
Cubin	Hulshof	Paul
Cunningham	Hunter	Paxon
Davis (VA)	Hyde	Pease
Deal	Inglis	Peterson (PA)
DeLay	Istook	Petri
Diaz-Balart	Jenkins	Pickering
Dickey	Johnson (CT)	Pitts

Pombo	Schaefer, Dan	Tauzin
Porter	Schaffer, Bob	Taylor (NC)
Portman	Sensenbrenner	Thomas
Pryce (OH)	Sessions	Thornberry
Quinn	Shadegg	Thune
Radanovich	Shaw	Tiahrt
Ramstad	Shays	Trafficant
Redmond	Shimkus	Upton
Regula	Shuster	Walsh
Riggs	Skeen	Wamp
Riley	Smith (MI)	Watkins
Rogan	Smith (NJ)	Watts (OK)
Rogers	Smith (OR)	Weldon (FL)
Rohrabacher	Smith (TX)	Weldon (PA)
Ros-Lehtinen	Smith, Linda	Weller
Roukema	Snowbarger	White
Royce	Souder	Whitfield
Ryun	Spence	Wicker
Salmon	Spence	Wolf
Sanford	Stearns	Young (AK)
Saxton	Stump	Young (FL)
Scarborough	Sununu	
	Talent	

NAYS—201

Abercrombie	Gutierrez	Neal
Ackerman	Hall (OH)	Oberstar
Allen	Hall (TX)	Obey
Andrews	Harman	Olver
Baldacci	Hastings (FL)	Ortiz
Barcia	Hefner	Owens
Barrett (WI)	Hilliard	Pallone
Becerra	Hinchey	Pascrell
Bentsen	Hinojosa	Pastor
Bereuter	Holden	Payne
Berman	Hooley	Pelosi
Berry	Hoyer	Peterson (MN)
Bishop	Jackson (IL)	Pickett
Blagojevich	Jackson-Lee	Pomeroy
Blumenauer	(TX)	Poshard
Bonior	Jefferson	Price (NC)
Borski	John	Rahall
Boswell	Johnson (WI)	Rangel
Boucher	Johnson, E.B.	Reyes
Boyd	Kanjorski	Rivers
Brady (PA)	Kaptur	Rodriguez
Brown (CA)	Kennedy (MA)	Roemer
Brown (FL)	Kennedy (RI)	Rothman
Brown (OH)	Kennelly	Roybal-Allard
Capps	Kildee	Rush
Cardin	Kilpatrick	Sabo
Carson	Kind (WI)	Sanchez
Clay	Kleczka	Sanders
Clayton	Klink	Sandlin
Clement	Kucinich	Sawyer
Clyburn	LaFalce	Schumer
Condit	Lampson	Scott
Conyers	Lantos	Serrano
Costello	Lee	Sherman
Coyne	Levin	Sisisky
Cramer	Lewis (GA)	Skaggs
Cummings	Lipinski	Skelton
Danner	Lofgren	Smith, Adam
Davis (FL)	Lowey	Snyder
Davis (IL)	Luther	Spratt
DeFazio	Maloney (CT)	Stabenow
DeGette	Maloney (NY)	Stark
Delahunt	Manton	Stenholm
DeLauro	Manzullo	Stokes
Deutsch	Martinez	Strickland
Dicks	Mascara	Stupak
Dixon	Matsui	Tanner
Doggett	McCarthy (MO)	Tauscher
Dooley	McCarthy (NY)	Taylor (MS)
Doyle	McDermott	Thompson
Edwards	McGovern	Thurman
Engel	McHale	Tierney
Eshoo	McIntyre	Torres
Etheridge	McKinney	Towns
Evans	McNulty	Turner
Farr	Meehan	Velazquez
Fattah	Meek (FL)	Vento
Fazio	Meeks (NY)	Visclosky
Filner	Menendez	Waters
Ford	Millender	Watt (NC)
Frost (MA)	McDonald	Waxman
Frost	Miller (CA)	Wexler
Furse	Minge	Weygand
Gejdenson	Moakley	Wise
Gephardt	Mollohan	Woolsey
Goode	Moran (VA)	Wynn
Gordon	Murtha	Yates
Green	Nadler	

NOT VOTING—11

Baesler	Gonzalez	McDade
Cannon	Hamilton	Slaughter
Dingell	Hutchinson	Solomon
Fawell	Markey	

□ 1814

Mr. MANZULLO and Mr. ABERCROMBIE changed their vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Speaker, I was unable to be present for rollcall votes 259 through 265 yesterday and today. Had I been present, I would have voted "yea" on rollcall votes 259, 263 and 264, and would have voted "no" on rollcall votes 260, 261 and 265.

Mr. Speaker, I ask that my statement appear in the permanent RECORD immediately following each vote.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BLUNT). The Chair wishes to remind Members that in order to maintain decorum and dignity in the Hall of the House, proper dress for male Members should include the wearing of a coat and tie. The Chair encourages Members to adhere to this historic standard.

GENERAL LEAVE

Mr. GOSS. 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 the resolution just agreed to.

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

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4112, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1999

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 105-601) on the resolution (H. Res. 489) providing for the consideration of the bill (H.R. 4112) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1999, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2676, THE IRS RESTRUCTURING AND REFORM ACT OF 1998

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 105-602) on the resolution (H. Res. 490) waiving points of order against the conference report to accompany the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes,

which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF A CONCURRENT RESOLUTION FOR ADJOURNMENT OF HOUSE AND SENATE FOR INDEPENDENCE DAY DISTRICT WORK PERIOD

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 105-603) on the resolution (H. Res. 491) providing for consideration of a concurrent resolution providing for adjournment of the House and Senate for the Independence Day district work period, which was referred to the House Calendar and ordered to be printed.

GENERAL LEAVE

Mr. YOUNG of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 4103) making appropriations for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes, and that I may be permitted to include tabular and extraneous material.

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

There was no objection.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1999

The SPEAKER pro tempore. Pursuant to House Resolution 484 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4103.

□ 1820

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4103) making appropriations for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes, with Mr. CAMP in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida (Mr. YOUNG) and the gentleman from Pennsylvania (Mr. MURTHA) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. YOUNG).

Mr. YOUNG of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are happy to present the defense appropriations bill for fiscal year 1999. I believe we can expedite the program this evening and be out of here before it gets too late. It is an important piece of legislation that I think most Members will want to sup-

port. There will be several amendments that we would anticipate, but I think we can move rather expeditiously.

Mr. MURTHA. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Chairman, I made all my comments on the rule, and I am prepared to yield back at any time.

Mr. YOUNG of Florida. Mr. Chairman, reclaiming my time, I think we will be prepared to do that very shortly. I think it would be in order to advise the Members of some of the highlights of the bill.

Before I do that, I want to recognize two members of this subcommittee. This will be the last time that they will serve on this subcommittee and be part of this bill, and that is our colleagues the gentleman from Pennsylvania (Mr. MCDADE) and the gentleman from North Carolina (Mr. HEFNER).

Mr. Chairman, these two gentlemen have served on this subcommittee for a long, long time, and many things have happened during their time here. The Berlin Wall came down during the time they were here, and we are going to give them credit for helping to make that happen.

The gentleman from North Carolina (Mr. HEFNER) wanted to know if he was going to get anything special in this bill. I said no; we would get together and buy him a watch or something, but he was not going to get anything special in the bill just because he was leaving.

Mr. Chairman, both the gentleman from North Carolina (Mr. HEFNER) and the gentleman from Pennsylvania (Mr. MCDADE) have been true patriots, they have been very strong on national defense, they have not been bashful in presenting their views on matters that came before the committee, and I think the House and their country owe a lot to the contributions they have made to the national security as members of this important subcommittee.

All of the members on this subcommittee, Mr. Chairman, have been extremely diligent and have worked many, many long hours, days and weeks, to prepare this bill, to go over the issues that we have to go over, the thousands of items that we have responsibility for.

Mr. Chairman, I would like to compliment the gentleman from Pennsylvania (Mr. MURTHA), the ranking member, and I want to say that as we present this bill, this is a bipartisan bill. It has been for many, many years, and it is for fiscal year 1999.

I would say to the Members that the gentleman from Pennsylvania (Mr. MURTHA) deserves a lot of credit as the leader on the minority side and former chairman. We have worked together in a partnership to make sure that the decisions that were made were in the interests of the security of our Nation, that they had a direct defense application and that there was a requirement for them.

So we bring a bill today that is slightly under the President's budget, and when we adjust for inflation, we are \$2.5 billion under where we were for fiscal year 1998. But we have been able to go through the various accounts. I would encourage Members to take a look at this report.

Mr. Chairman, we have talked so many times about waste, fraud and abuse in Federal agencies. In this report you will find page after page, example after example, of where we have gone through every contract and every program and we have found places where there was waste that we eliminated; we have found places where we can save money because of contract slips, and we did that. Because we did that, we were able to provide most of the things that the President asked for in his budget, and, at the same time, we were able to make some additions.

Mr. Chairman, I would like to tell the House what those additions are. I would like to say that we did fund the pay raise for members of the military and the civilian workers in the Department of Defense. We have been able to increase substantially real property maintenance so that we could do something about the poor living conditions that some of our soldiers, sailors, Marines and airmen have to live in. We have provided additional money for the spare parts and flying hours so that we do not go directly to a hollow force.

But one thing we did not do, Mr. Chairman, we did not provide enough money to adequately provide for the security of this Nation today and in the years to come. We are on a down slope. This will be the 14th year in a row that our investment in our own national security has been less than it was the year before, when inflation is considered.

We have ships at sea that are undermanned. We have men and women who are deployed more often than they should be. The deployments are excessive, the OPTEMPO is excessive, and you just cannot continue to do more with less.

The worst part about this bill is it does not meet the requirements of the services. The services themselves and the Reserve components have identified approximately \$12 billion in unbudgeted requirements for this year alone that they need to just maintain the infrastructure, not create some new weapons system, not to create something new and glamorous and dramatic, but just to do the day-to-day things that are required to keep the military functioning and to keep readiness up. So that is a major problem in this bill. It just does not have enough to take care of those problems.

Mr. Chairman, we will debate many of these issues as we go through some of the amendments. At this point, however, I would like to insert in the RECORD a table which summarizes the overall funding in this bill as it currently stands before the House.

DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, 1999 (H.R. 4103)

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
TITLE I					
MILITARY PERSONNEL					
Military Personnel, Army.....	20,452,057,000	21,002,051,000	20,908,851,000	+ 456,794,000	-93,200,000
Military Personnel, Navy.....	16,493,518,000	16,613,053,000	16,560,253,000	+ 66,735,000	-52,800,000
Military Personnel, Marine Corps.....	6,137,899,000	6,272,089,000	6,241,189,000	+ 103,290,000	-30,900,000
Military Personnel, Air Force.....	17,102,120,000	17,311,683,000	17,201,583,000	+ 99,463,000	-110,100,000
Reserve Personnel, Army.....	2,032,046,000	2,152,075,000	2,171,875,000	+ 139,629,000	+ 19,600,000
Reserve Personnel, Navy.....	1,376,601,000	1,387,379,000	1,427,979,000	+ 51,378,000	+ 40,600,000
Reserve Personnel, Marine Corps.....	391,770,000	401,888,000	403,513,000	+ 11,743,000	+ 1,625,000
Reserve Personnel, Air Force.....	815,915,000	856,176,000	850,576,000	+ 34,861,000	-5,600,000
National Guard Personnel, Army.....	3,333,867,000	3,404,595,000	3,413,195,000	+ 79,328,000	+ 8,600,000
National Guard Personnel, Air Force.....	1,334,712,000	1,376,097,000	1,372,997,000	+ 38,285,000	-3,100,000
Total, title I, Military Personnel.....	69,470,505,000	70,777,086,000	70,551,811,000	+ 1,081,306,000	-225,275,000
TITLE II					
OPERATION AND MAINTENANCE					
Operation and Maintenance, Army.....	16,754,306,000	17,223,063,000	16,936,503,000	+ 182,197,000	-286,560,000
(By transfer - National Defense Stockpile).....	(50,000,000)	(50,000,000)	(50,000,000)		
Operation and Maintenance, Navy.....	21,617,766,000	21,877,202,000	21,638,999,000	+ 21,233,000	-238,203,000
(By transfer - National Defense Stockpile).....	(50,000,000)	(50,000,000)	(50,000,000)		
Operation and Maintenance, Marine Corps.....	2,372,635,000	2,523,703,000	2,585,118,000	+ 212,483,000	+ 61,415,000
Operation and Maintenance, Air Force.....	18,492,883,000	19,127,004,000	19,024,233,000	+ 531,350,000	-102,771,000
(By transfer - National Defense Stockpile).....	(50,000,000)	(50,000,000)	(50,000,000)		
Operation and Maintenance, Defense-Wide.....	10,369,740,000	10,750,601,000	10,804,542,000	+ 434,802,000	+ 53,941,000
Operation and Maintenance, Army Reserve.....	1,207,891,000	1,202,622,000	1,201,222,000	-6,669,000	-1,400,000
Operation and Maintenance, Navy Reserve.....	921,711,000	928,639,000	949,039,000	+ 27,328,000	+ 20,400,000
Operation and Maintenance, Marine Corps Reserve.....	116,366,000	114,593,000	119,093,000	+ 2,727,000	+ 4,500,000
Operation and Maintenance, Air Force Reserve.....	1,632,030,000	1,744,696,000	1,735,996,000	+ 103,966,000	-8,700,000
Operation and Maintenance, Army National Guard.....	2,419,632,000	2,436,815,000	2,570,315,000	+ 150,683,000	+ 133,500,000
Operation and Maintenance, Air National Guard.....	3,013,282,000	3,093,933,000	3,075,233,000	+ 61,951,000	-18,700,000
Overseas Contingency Operations Transfer Fund.....	1,884,000,000	746,900,000	746,900,000	-1,137,100,000	
United States Court of Appeals for the Armed Forces.....	6,952,000	7,324,000	7,324,000	+ 372,000	
Environmental Restoration, Army.....	375,337,000	377,840,000	342,640,000	-32,697,000	-35,000,000
Environmental Restoration, Navy.....	275,500,000	281,600,000	281,600,000	+ 8,100,000	
Environmental Restoration, Air Force.....	376,900,000	379,100,000	379,100,000	+ 2,200,000	
Environmental Restoration, Defense-Wide.....	26,900,000	26,091,000	26,091,000	-809,000	
Environmental Restoration, Formerly Used Defense Sites.....	242,300,000	195,000,000	195,000,000	-47,300,000	
Overseas Humanitarian, Disaster, and Civic Aid.....	47,130,000	63,311,000	56,111,000	+ 8,981,000	-7,200,000
Former Soviet Union Threat Reduction.....	382,200,000	442,400,000	417,400,000	+ 35,200,000	-25,000,000
Quality of Life Enhancements, Defense.....	360,000,000		850,000,000	+ 490,000,000	+ 850,000,000
Total, title II, Operation and maintenance.....	82,895,461,000	83,542,237,000	83,942,459,000	+ 1,046,998,000	+ 400,222,000
(By transfer).....	(150,000,000)	(150,000,000)	(150,000,000)		
TITLE III					
PROCUREMENT					
Aircraft Procurement, Army.....	1,346,317,000	1,325,943,000	1,400,338,000	+ 54,021,000	+ 74,395,000
Missile Procurement, Army.....	762,409,000	1,205,768,000	1,140,623,000	+ 378,214,000	-65,145,000
Procurement of Weapons and Tracked Combat Vehicles, Army.....	1,298,707,000	1,433,808,000	1,513,540,000	+ 214,833,000	+ 79,932,000
Procurement of Ammunition, Army.....	1,037,202,000	1,008,855,000	1,099,155,000	+ 61,953,000	+ 90,300,000
Other Procurement, Army.....	2,679,130,000	3,198,811,000	3,101,130,000	+ 422,000,000	-97,681,000
Aircraft Procurement, Navy.....	6,535,444,000	7,466,734,000	7,599,968,000	+ 1,064,524,000	+ 133,234,000
Weapons Procurement, Navy.....	1,102,193,000	1,327,545,000	1,191,219,000	+ 89,026,000	-136,326,000
Procurement of Ammunition, Navy and Marine Corps.....	397,547,000	429,539,000	473,803,000	+ 76,256,000	+ 44,264,000
Shipbuilding and Conversion, Navy.....	8,235,591,000	6,252,672,000	5,973,452,000	-2,262,139,000	-279,220,000
Other Procurement, Navy.....	3,144,205,000	3,937,737,000	3,990,553,000	+ 846,348,000	+ 52,816,000
Procurement, Marine Corps.....	482,398,000	745,858,000	812,618,000	+ 330,220,000	+ 66,760,000
Aircraft Procurement, Air Force.....	6,480,983,000	7,756,475,000	8,384,735,000	+ 1,903,752,000	+ 628,260,000
Missile Procurement, Air Force.....	2,394,202,000	2,359,803,000	2,191,527,000	-202,675,000	-168,276,000
Procurement of Ammunition, Air Force.....	398,534,000	384,161,000	388,925,000	-9,609,000	+ 4,764,000
Other Procurement, Air Force.....	6,592,909,000	6,974,387,000	7,034,217,000	+ 441,308,000	+ 59,830,000
Procurement, Defense-Wide.....	2,106,444,000	2,041,850,000	2,055,432,000	-51,012,000	+ 13,782,000
National Guard and Reserve Equipment.....	653,000,000		120,000,000	-533,000,000	+ 120,000,000
Total, title III, Procurement.....	45,647,215,000	47,849,546,000	48,471,235,000	+ 2,824,020,000	+ 621,689,000
TITLE IV					
RESEARCH, DEVELOPMENT, TEST AND EVALUATION					
Research, Development, Test and Evaluation, Army.....	5,156,507,000	4,780,545,000	4,967,446,000	-189,061,000	+ 186,901,000
Research, Development, Test and Evaluation, Navy.....	8,115,688,000	8,108,923,000	8,297,986,000	+ 182,300,000	+ 189,063,000
Research, Development, Test and Evaluation, Air Force.....	14,507,804,000	13,598,093,000	13,577,441,000	-930,363,000	-20,852,000
Research, Development, Test and Evaluation, Defense-Wide.....	9,821,760,000	9,314,665,000	8,776,318,000	-1,045,442,000	-538,347,000
Developmental Test and Evaluation, Defense.....	258,183,000	251,106,000	263,606,000	+ 5,423,000	+ 12,500,000
Operational Test and Evaluation, Defense.....	31,384,000	25,245,000	35,245,000	+ 3,861,000	+ 10,000,000
Total, title IV, Research, Development, Test and Evaluation.....	37,891,324,000	36,078,577,000	35,918,042,000	-1,973,282,000	-160,535,000

DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, 1999 (H.R. 4103)

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
TITLE V					
REVOLVING AND MANAGEMENT FUNDS					
Defense Working Capital Funds.....	971,952,000	94,500,000	94,500,000	-877,452,000	.....
Transfer stockpile balances to working capital fund .....	.....	(350,000,000)	(350,000,000)	(+ 350,000,000)	.....
Reserve mobilization income insurance fund .....	.....	37,000,000	.....	.....	-37,000,000
National Defense Sealift Fund:					
Ready Reserve Force.....	302,000,000	311,266,000	311,266,000	+ 9,266,000	.....
Acquisition	772,948,000	106,900,000	362,100,000	-410,848,000	+255,200,000
Transfer out.....	.....	.....	(28,800,000)	(+28,800,000)	(+28,800,000)
Total	1,074,948,000	418,166,000	673,366,000	-401,582,000	+255,200,000
Total, title V, Revolving and Management Funds.....	2,046,900,000	549,666,000	767,866,000	-1,279,034,000	+218,200,000
(By transfer).....	.....	(350,000,000)	(350,000,000)	(+ 350,000,000)	.....
TITLE VI					
OTHER DEPARTMENT OF DEFENSE PROGRAMS					
Defense Health Program:					
Operation and maintenance.....	10,095,007,000	9,653,435,000	9,725,235,000	-369,772,000	+71,800,000
Procurement	274,068,000	402,387,000	402,387,000	+128,318,000	.....
Total, Defense Health Program	10,369,075,000	10,055,822,000	10,127,622,000	-241,453,000	+71,800,000
Chemical Agents & Munitions Destruction, Army: 1/					
Operation and maintenance.....	462,200,000	531,650,000	508,650,000	+46,450,000	-23,000,000
Procurement	72,200,000	140,670,000	124,670,000	+52,470,000	-16,000,000
Research, development, test, and evaluation	66,300,000	182,780,000	162,780,000	+96,480,000	-20,000,000
Total, Chemical Agents.....	600,700,000	855,100,000	796,100,000	+195,400,000	-59,000,000
Drug Interdiction and Counter-Drug Activities, Defense	712,882,000	727,582,000	764,585,000	+51,713,000	+37,013,000
Office of the Inspector General.....	138,380,000	132,064,000	132,064,000	-6,316,000	.....
Total, title VI, Other Dept of Defense Programs.....	11,821,037,000	11,770,568,000	11,820,381,000	-656,000	+49,813,000
TITLE VII					
RELATED AGENCIES					
Central Intelligence Agency Retirement and Disability System Fund	196,900,000	201,500,000	201,500,000	+4,600,000	.....
Intelligence Community Management Account.....	121,080,000	138,623,000	136,123,000	+15,043,000	-2,500,000
Transfer to Dept of Justice	(27,000,000)	(27,000,000)	(27,000,000)	.....	.....
Payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund.....	35,000,000	15,000,000	15,000,000	-20,000,000	.....
National Security Education Trust Fund	2,000,000	5,000,000	3,000,000	+1,000,000	-2,000,000
Total, title VII, Related agencies.....	354,980,000	360,123,000	355,623,000	+643,000	-4,500,000
TITLE VIII					
GENERAL PROVISIONS					
Additional transfer authority (sec. 8005).....	(2,000,000,000)	(2,000,000,000)	(2,000,000,000)	.....	.....
Indian Financing Act Incentives (sec. 8024).....	8,000,000	2,000,000	2,000,000	-6,000,000	.....
Disposal & lease of DOD real property (sec. 8040).....	64,000,000	25,000,000	25,000,000	-39,000,000	.....
Overseas Military Fac Investment Recovery (sec. 8044)	30,000,000	38,000,000	38,000,000	+8,000,000	.....
Export loan guarantee PGM	1,000,000	.....	.....	-1,000,000	.....
Rescissions (sec. 8056)	-176,100,000	.....	-268,370,000	-92,270,000	-268,370,000
Flying Hour/readiness offset.....	-1,253,000,000	.....	.....	+1,253,000,000	.....
FFRDC's/consultants (sec. 8034)	-71,800,000	.....	-62,000,000	+9,800,000	-62,000,000
Advisory and assistance services	-300,000,000	.....	.....	+300,000,000	.....
RDT&E, Def-Wide dual-use program.....	2,000,000	.....	.....	-2,000,000	.....
Fisher Houses (sec. 8085)	1,000,000	1,000,000	1,000,000	.....	.....
Travel Cards (sec. 8086)	5,000,000	5,000,000	5,000,000	.....	.....
Warranties	-75,000,000	.....	.....	+75,000,000	.....
Excess Inventory.....	-100,000,000	.....	.....	+100,000,000	.....
National Missile Defense Offset	-474,000,000	.....	.....	+474,000,000	.....
Intrepid	13,000,000	.....	.....	-13,000,000	.....
Expiring Balances.....	-100,000,000	.....	.....	+100,000,000	.....
National Security Strategy Study Group	3,000,000	.....	.....	-3,000,000	.....
Lexington Bluegrass	4,000,000	.....	.....	-4,000,000	.....
Ship Transfers (sec. 8102) .....	.....	.....	-636,850,000	-636,850,000	-636,850,000
Inflation Savings (sec. 8101).....	.....	.....	-204,100,000	-204,100,000	-204,100,000
Total, title VIII.....	-2,418,900,000	71,000,000	-1,100,320,000	+1,318,580,000	-1,171,320,000
EMERGENCY FUNDING					
Bosnia (Emergency Funding) .....	.....	1,858,600,000	.....	.....	-1,858,600,000
Supplemental (P.L. 105-174) (emergency funding).....	2,834,775,000	.....	.....	-2,834,775,000	.....
Total, Emergency funding	2,834,775,000	1,858,600,000	.....	-2,834,775,000	-1,858,600,000

DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, 1999 (H.R. 4103)

	FY 1998 Enacted	FY 1999 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
BUDGET SCOREKEEPING ADJUSTMENTS					
Adjustment for unapprop'd balance transfer (Stockpile)	150,000,000	150,000,000	150,000,000	.....	.....
Stockpile collections (unappropriated).....	-150,000,000	-150,000,000	-150,000,000	.....	.....
Total adjustments .....	.....	.....	.....	.....	.....
Total, Department of Defense.....	247,708,522,000	250,998,803,000	250,727,087,000	+3,018,575,000	-271,706,000
Emergency funding	2,834,775,000	1,858,600,000	.....	-2,834,775,000	-1,858,600,000
Grand total (including emergency funding)	250,543,297,000	252,857,403,000	250,727,087,000	+183,800,000	-2,130,306,000
Allocation recap (sec. 302b):					
Mandatory	196,900,000	201,500,000	201,500,000	+4,600,000	.....
Discretionary:					
Domestic	27,000,000	27,000,000	27,000,000	.....	.....
Defense	250,319,397,000	252,828,903,000	250,498,587,000	+179,200,000	-2,130,306,000
Total discretionary	250,346,397,000	252,855,903,000	250,727,587,000	+179,200,000	-2,130,306,000
Grand total	250,543,297,000	252,857,403,000	250,727,087,000	+183,800,000	-2,130,306,000
RECAPITULATION					
Title I - Military Personnel.....	69,470,505,000	70,777,086,000	70,551,811,000	+1,081,306,000	-225,275,000
Title II - Operation and Maintenance	82,895,461,000	83,542,237,000	83,942,459,000	+1,046,998,000	+400,222,000
(By transfer).....	(150,000,000)	(150,000,000)	(150,000,000)	.....	.....
Title III - Procurement.....	45,647,215,000	47,849,546,000	48,471,235,000	+2,824,020,000	+621,689,000
Title IV - Research, Development, Test and Evaluation.....	37,891,324,000	36,078,577,000	35,918,042,000	-1,973,282,000	-160,535,000
Title V - Revolving and Management Funds	2,046,900,000	549,866,000	787,866,000	-1,279,034,000	+218,200,000
(By transfer).....	.....	(350,000,000)	(350,000,000)	(+350,000,000)	.....
Title VI - Other Department of Defense Programs.....	11,821,037,000	11,770,568,000	11,820,381,000	-856,000	+49,813,000
Title VII - Related agencies	354,980,000	360,123,000	355,623,000	+643,000	-4,500,000
Title VIII - General provisions	-2,418,900,000	71,000,000	-1,100,320,000	+1,318,580,000	-1,171,320,000
Total, Department of Defense.....	247,708,522,000	250,998,803,000	250,727,087,000	+3,018,575,000	-271,706,000
Emergency funding	2,834,775,000	1,858,600,000	.....	-2,834,775,000	-1,858,600,000
Grand total (including emergency funding)	250,543,297,000	252,857,403,000	250,727,087,000	+183,800,000	-2,130,306,000

1/ Included in Budget under Procurement title.

Mr. Chairman, I yield two minutes to the gentleman from New York (Mr. GILMAN), the distinguished chairman of the Committee on International Relations.

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

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding me time for the purpose in engaging in a colloquy relating to a provision in this bill on naval vessel transfers.

Mr. Chairman, as the gentleman from Florida knows, I appeared before the Committee on Rules yesterday to oppose making in order section 8102 of this bill. Section 8102 authorizes the transfer of naval vessels to certain foreign nations. It directly concerns the Foreign Assistance Act and the Arms Export Control Act, and thus falls squarely within the jurisdiction of the Committee on International Relations. In addition, it constitutes an item of authorization that directly violates clause 2 of rule XXI of the House.

This section should be subject to a point of order on this bill, but it is not, because the Committee on Rules and the leadership of this house chose to protect the provision.

Section 8102 also establishes a new military foreign aid program for two countries that we graduated from foreign aid just last year, and also uses a budget maneuver to fund this new foreign aid program, while providing another \$500 million in spending in this bill.

I would ask the gentleman from Florida (Mr. YOUNG) if it would be his intention to work with the Committee on International Relations and keep us fully informed during his conference with the Senate on the status of this provision?

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. GILMAN. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I would be happy to respond to the gentleman that I would be pleased to keep the chairman of the Committee on International Relations fully informed about the status of this provision during our conference committee. The gentleman from New York (Mr. GILMAN) and I have discussed this, and we have an understanding with each other that we will certainly do that.

Mr. GILMAN. Mr. Chairman, reclaiming my time, I want to thank the gentleman from Florida. Let me ask the gentleman, would he further agree that he would support a modification to this provision in the conference committee to make certain that subsections 8102(f) and 8102(g) are deleted?

Mr. YOUNG of Florida. Mr. Chairman, if the gentleman would yield further, I would assure the gentleman that I will work with my House and Senate colleagues in conference to develop the appropriate modifications to these subsections, and will continue to work with the gentleman from New

York to reach a mutually satisfactory outcome on this matter.

Mr. GILMAN. Mr. Chairman, reclaiming my time, I want to thank the gentleman from Florida for his assurance, and for yielding me time to engage in this colloquy.

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Mr. YOUNG of Florida. Mr. Chairman, I yield myself 1 minute.

Mr. MANZULLO. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the gentleman from Illinois.

Mr. MANZULLO. Mr. Chairman, I share the concern of my committee chairman. What we are doing is selling 48 ships for only \$13 million apiece.

About 3 years ago in a hearing in the Committee on International Relations, which has original jurisdiction over the sale of surplus ships, there was a move to give away 10 ships, to which I objected, and Senator BROWNBACK from Kansas and I passed legislation, subsequently called the Manzullo amendment. Those 10 ships were then sold for \$495 million.

Subsequent to that, every year that amendment has come up, and that money is kept back in the coffers in IR towards that bill. But this takes jurisdiction away from the Committee on International Relations. I do not know if this is a bargain sale or not, but I would like some type of assurance from whoever set this price at \$637 million that the United States is not giving away billions of dollars worth of ships for which we should be fully compensated.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. MANZULLO. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I would respond to the gentleman by saying first that I have given my assurance to the chairman of his committee; second, we do not set the price for these ships; third, without these transfers, these ships are going to be mothballed or cut up into scraps. Finally, who they are going to would primarily be to NATO allies for their own defense.

Mr. MANZULLO. I would like whoever set the price to furnish that.

Mr. YOUNG of Florida. I do not set the price. We do not set the price.

Mr. MURTHA. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon, Mr. DEFAZIO.

Mr. DEFAZIO. Mr. Chairman, I would like to engage the chairman for a moment in two very important programs in which I know the chairman has a great interest.

The first is the DOD-VA medical research account. Last year the chairman graciously accepted my amendment on the floor to lift the amount of money invested in this program, a tremendous program dealing with Gulf War syndrome, traumatic nervous system injury, and other combat readiness and combat-related injuries to \$15 mil-

lion. Eleven million dollars is in the House bill.

I would like to know the chairman's intention, if we can be assured that in the conference the chairman will strive to make the program whole so we at least can maintain current services.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I hope the gentleman knows that we do support this program, despite the fact that it was not included in the President's budget. We did provide some \$11 million for the program. We intend to support this program in conference.

Mr. DEFAZIO. Mr. Chairman, there is a second program, and this is a little bit personal to my district. There is a program which the gentleman is familiar with, the National Guard Youth Challenge Program. It actually operates in Oregon in the district of the gentleman from Oregon (Mr. BOB SMITH).

But if the gentleman is aware of the tragic shooting that took place in the high school near my home in Springfield, rather sadly, the father of that youth was attempting on the day that he was killed to enroll the youth into the National Guard Youth Challenge Program, because it has such an incredible reputation in our State. They have put more than 500 at-risk youth through that program, and Major General Reese told me that only 4 of those youths out of 500 have committed crimes after going through that program.

I realize that the administration only requested \$28.5 million, and I certainly intend to put efforts into getting the administration to ask for more next year. I realize that the chairman has upped that by \$10 million during the committee process.

It is my great hope that the chairman can strive to reach, at least in conference, the \$50 million level, which would maintain the current services. There are States, including that of the gentleman from Pennsylvania (Mr. MURTHA) on the waiting list.

I would hope, I know the chairman supports the program, I would hope that we can strive to at least make the program whole and perhaps get to some of the States on the waiting list in the near future.

Mr. YOUNG of Florida. If the gentleman will yield, again I would respond in the affirmative that we do support this program and we did add money over and above the President's budget request.

We will do the best we can in conference, and I will be honest with my colleague and say that is the best commitment I can give him now. We will do the best we can. But understand that going into conference, we are going to be several billion dollars apart. We will do the very best we can to achieve what the gentleman would like to achieve.

Mr. DEFAZIO. I thank the gentleman. I would note that the Senate is at 62. If we did the usual sort of split the difference, we would come out a little over 50, which would make the program whole.

Mr. YOUNG of Florida. The gentleman is correct, and that happens a lot.

Mr. DEFAZIO. I thank the gentleman.

Mr. YOUNG of Florida. Mr. Chairman, I yield 1 minute to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Chairman, Lyme disease is one of the Nation's fastest growing infectious diseases. This is an issue of great concern to military personnel and their families who serve and train in areas endemic for Lyme disease.

In New Jersey both Fort Dicks and Naval Weapons Station Earle have been indicated as having high levels of risk of Lyme disease during their latest known Lyme disease risk assessment.

As the chairman knows, as a result of an amendment that I had offered in 1994, the Department of Defense Lyme disease research programs ran out in February of 1997. According to the Army Surgeon General's office, a mere \$600,000 would be needed each year to optimally maintain the tick-borne disease program and the Molecular Biology Laboratory.

Can the chairman assure me that the conference report on this bill will contain the \$600,000 in funding that the U.S. Army needs to continue with this important work in the fight against Lyme disease, and tick-borne diseases?

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I agree with the gentleman from New Jersey that this important funding should and will be renewed. To that end, I will try to work during the conference and negotiations on this to ensure that it will contain the necessary resources to enable the Department of Defense, as well as the United States Army Center for Health Promotion and Preventative Medicine, to continue their work in the area of Lyme disease.

I also want to commend the gentleman for raising this issue with me and with the committee. The gentleman is correct that Lyme disease and tick-borne illnesses are a significant problem for our troops in many areas of our country. I want to make sure that we do everything we can to make sure American military personnel are protected against the risks of Lyme disease when they are deployed or training in endemic areas.

Mr. SMITH of New Jersey. I thank the distinguished chairman.

Mr. YOUNG of Florida. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. CUNNINGHAM), a member of the subcommittee.

Mr. CUNNINGHAM. Mr. Chairman, I thank the gentleman for yielding me the time.

What a good committee to serve on, Mr. Chairman. The gentleman from Pennsylvania (Mr. JACK MURTHA) has done nothing but been supportive and fought for the national security of this country. I would say that of every single subcommittee member on both sides of the aisle. There is no partisanship, it is for the national security of this country.

However, I would tell the Members, Mr. Chairman, that national defense, and I was a professional for 20 years, is at the lowest I have seen it in 30 years, the worst shape I have seen it in 30 years. We could survive with a low budget and a balanced budget amount that we put in, but what is killing national security are the deployments and the national security policy of the White House, 300 percent OP TEMPO deployments away from home above what we were in the Cold War. That money from Haiti and Somalia and Bosnia and all the other deployments comes out of defense budgets. It is killing us.

The effect is, it is driving our military out of the service. The gentleman from Pennsylvania (Mr. MURTHA) will agree. We only have 24 percent retention of our enlisted. That means our experience is going away. We are dealing with 1970s technologies in our F-14s, F-15s, F-16s.

There are only four up jets in Oceana today. They normally have 45 for training. Why is this? Because they are cannibalizing off the airplanes we have up and sending them to the front. Used parts on an old airplane with maintenance troops that are less and less qualified means that we are going to lose airplanes and air crew in massive numbers in the next 5 years, starting this year, Mr. Chairman. We have to do something about that.

Look at what the threat is. In my first chart, those that will come before this body and say the Cold War is over, this is what the threat is. All over the world, this is where the Fulcrum, the Flankers, and the enemy missiles are stationed. Our own President sent missile technology to China, and China has been shipping chemical and biological weapons and nuclear components to Iran, Iraq, Syria, and Pakistan; real threats to this country. The Cold War is not over.

I look at the next chart. This is just general equipment where the technology is above U.S. technology. I am alive today in combat because I had better training and better equipment. This edge is gone, Mr. Chairman.

This is the SA-5, this is the SA-11 surface-to-air missiles, this is the tanks, this is the quad and radar-directed fire. I can go on and on with how their technology—they are supposed to be broken, the Cold War is over, but take a look.

Look at this, Mr. Chairman. This is the AA-10 and AA-12 missile, that out-

ranges our best missiles. Our pilots are going to die if they face Russian technology.

Mr. Chairman, look at the F-14, F-15, F-16, F-18, today. If they meet an SU-27, an SU-27 they are at parity with, but an SU-35 or 37, with their technology and these missiles on board, if we come head to head and they can see us before we see them, their missiles out-range us and are better, better than our American Ram. The technology of the F-22 and the F-18E/F puts the Stealth where we can close inside those technologies, yet we do not have the procurement. This committee had to cut 3 F-18s. We also need C130s for transportation.

I think in conference we will get all of them, but the threat is there. The Cold War is not over. I would ask my colleagues that want to continue to cut defense, there is a hollow force today, my colleagues. It is in the worst shape I have ever seen it in my entire life in service in the military.

Do not let it happen, because it is going to be our sons and our daughters and our grandchildren that we are going to ask to serve. Do not ask them to serve and come back in a body bag.

Mr. YOUNG of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. ROEMER) for a colloquy.

Mr. ROEMER. Mr. Chairman, I thank the chairman for yielding time to me.

Mr. Chairman, I want to commend the chairman and the ranking member of the Committee on National Security for their work on the defense appropriations bill for FY 1999. I want to especially thank the gentleman from Pennsylvania (Mr. MURTHA) and the gentleman from Florida (Mr. YOUNG) for their help on the humvee and 2½ ton truck.

I am particularly grateful to the gentleman from Florida (Chairman YOUNG) for his sharing my concerns of the Navy's plans to procure a new target missile system. The current supply of Vandal missiles will run out in 2001, and the Navy must replace it with a new supersonic sea-skimming target missile.

Over 100 of my constituents work on the Sea Snake, and I am concerned about the potential willingness of the Navy to procure a Russian-made target missile to meet their long-term future needs. The Navy has spent a significant amount of foreign cooperative test program money developing the Russian MA-31. Furthermore, the Navy, on June 8, announced its intent to award a firm, fixed-price solo source contract to procure the MA-31 for target shooting purposes.

In the view of the pending RFP due out later this month, I am concerned about the Navy's procuring the MA-31 at this time, as it is a competitor in an open and fair competition. It is difficult for me to believe that will in fact be a truly open or truly fair competition. I would like to ask my colleague, the distinguished chairman, if he is

aware of this recent announcement, and if he shares my concern over this competition.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. ROEMER. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I would respond to the gentleman and thank the chairman for raising this issue.

As he knows because of our numerous conversations about this, I want to assure him that we will do everything we can to guarantee that the Navy does what it is supposed to do and what the report of this subcommittee tells it to do, and that is to follow all the procedural requirements for an open and fair competition.

Mr. ROEMER. I thank the distinguished chairman. I thank my ranking member, the gentleman from Pennsylvania (Mr. MURTHA) for all his help, and I think both share in my puzzlement as to why the Navy would want to procure and rely upon a Russian-made target system at the expense of the only American-made source of target systems.

If the Navy continues on the present course American jobs could be lost, and the only source of target missiles will be lost as well.

Mr. MURTHA. Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Mr. BENTSEN).

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

Mr. BENTSEN. Mr. Chairman, I had intended to offer an amendment in the general provisions section of this bill limiting the Navy from being able to expend funds for the disposal of napalm, which is currently stockpiled in Southern California.

□ 1845

Earlier this week, it came to my attention that the Navy's general contractor is very close to letting subcontracts to one or more disposal operations in Texas, including in my district in Deer Park, Texas, as well as San Leon, Texas, Port Arthur, Texas, and Andrews County, Texas.

My concern, and I think the concern of the regulators in my State, the Texas Natural Resource Conservation Commission, and the Governor of Texas, who was only notified yesterday, is that the Navy has not done a very adequate job of notifying the public of what their intention is. And this comes on the heels of their earlier intent to dispose in East Chicago.

If lieu of offering what would be a very broad amendment, in short order I am willing to withdraw it. But I would like to ask if the ranking member and the chairman of the subcommittee would help in encouraging the Navy, if they decide to go forward, to provide better notification.

Their intent is to award the contract July 6 through July 8 and start transporting product between July 15 and 16.

This is the same time we have an incredible bottleneck in rail with the Union Pacific/Southern Pacific merger, more than 300,000 cars blocked in the greater Houston area.

Mr. MURTHA. Mr. Chairman, will the gentleman yield?

Mr. BENTSEN. I yield to the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Chairman, let me say to the gentleman from Texas (Mr. BENTSEN), the Navy has really handled this badly as far as keeping people informed and it is unfortunate. I think the gentleman has taken a very reasonable position that they have not consulted with him or talked to him, barely notified him as they were about to move things through.

Mr. Chairman, I can assure the gentleman from Texas that we will watch this carefully. Any amendment offered would make it even more difficult to solve this problem. As a matter of fact, a couple of people came to me with ideas about how to solve the problem and they sent them to the Navy. Hopefully, we will be able to solve this problem quickly.

It is a very big problem in California because it is starting to leech out, so we have to do something about it. I assure the gentleman we will work with him and try to do something.

Mr. PACKARD. Mr. Chairman, will the gentleman yield?

Mr. BENTSEN. I yield to the gentleman from California.

Mr. PACKARD. Mr. Chairman, I appreciate the gentleman from Texas (Mr. BENTSEN) yielding, and I deeply appreciate the gentleman not introducing his amendment.

Just to give a little background, the gentleman from Pennsylvania (Mr. MURTHA) has clearly outlined it, but for 25 years the napalm has been stored in my district at an ammunition depot. No one has been overly concerned about it until it started leaking out of the canisters into the soil and into the air, and then it became of great concern to the Navy and to some of the people in my district.

The Navy has carefully outlined a plan to recycle it. They have made no decision to this point as to what company they would offer a contract to. I know that Texas is being considered, but it is only one of the considerations.

But, Mr. Chairman, they have got to be able to process it and recycle it. It cannot stay the way it is. It would be a terrible hazard if it stayed the way it was. And so the gentleman's amendment would have really resulted in a situation that is unacceptable.

Mr. BENTSEN. Mr. Chairman, reclaiming my time, I appreciate the gentleman's response on that issue. The biggest concern we have, and yes, the Navy does have to do something with this, but they need to notify the public of this.

We are talking about, in the case of Deer Park, part of the third largest metropolitan area in the country, and we do have a lot of petrochemical in-

dustry. But to give us 2 weeks notification before it is transported, or 3 weeks, is insufficient.

Mr. PACKARD. Mr. Chairman, if the gentleman would continue to yield, I will do all I can to get the Navy to do a better job of communicating and working with us, but the fact is napalm under the plan is safer to ship than gasoline, and we ship gasoline on the streets of our communities all across America every day. But it is much safer than gasoline or many of the other products that they ship on a daily basis.

Mr. CUNNINGHAM. Mr. Chairman, will the gentleman yield?

Mr. BENTSEN. I yield to the gentleman from California.

Mr. CUNNINGHAM. Mr. Chairman, I have talked to the Navy and regarding the problem of the backup of railroad cars, they would bring it as far as Texas and then off-load it onto trucks and bring it in. So it would not affect that kind of problem.

This was not a problem until the White House got involved with it in East Chicago, Indiana, and stopped it right just before the elections. Now Al Gore is going to Texas and all of a sudden it stopped because of the environmentalists.

Mr. Chairman, we will work hand-in-hand with the gentleman from Texas (Mr. BENTSEN), because there is no problem with it. As the gentleman from California (Mr. PACKARD) has said, this is safer than gas to ship. It will also be used to make cement. It is a useful product. The wood will be chewed up and go to Oklahoma and the metal, the aluminum, will be recycled. It is a win-win situation.

I agree the gentleman's constituents in Texas need to know what the positives are instead of the negatives.

Mr. BENTSEN. Mr. Chairman, again reclaiming my time, if the Navy can solve the rail problem, that would be a swift trick, but that is something they need to be concerned about.

I appreciate the comments of the gentleman from California and appreciate the help of the gentleman from Pennsylvania (Mr. MURTHA) on this issue.

Mr. MURTHA. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I was going to offer an amendment. I will not be offering it. The lateness of the hour, frankly, makes me think it would not get the kind of attention that I would have hoped. But I do want to explain why I am going to vote against this bill.

Mr. Chairman, we are in a different situation post-Cold War, and I continue to be perplexed by those who argue that we are not safer. It seems to me people are denigrating the whole notion that we accomplished something significant by the dismantlement of the Soviet Union.

Yes, there are threats in the world today that exist other than the major

threat we had in the Soviet Union. Those threats, of course many of them existed then as well. There is a quantitative difference. For 50 years, beginning with the rise of Hitler and the emergence of the Soviet Union, the physical existence of this country was at risk. We had evil people who hated democracy who had the ability substantially to inflict physical damage on us.

That has been substantially changed. We do face dangers in the world today, but they are not of the order that they were during the Hitler and the Stalin years and their successors, yet we continue to spend at very high levels.

Mr. Chairman, we are in a zero sum situation. Money we spend on the military cannot be spent on keeping cops on the streets, fighting drugs here at home, providing necessary housing for people, fighting environmental hazards. And there is a way that we could make savings that the administration of this Congress has failed to take advantage of.

We continue to subsidize our wealthy allies, particularly in Western Europe, far beyond what is logical. We continue to bear the burden of defending Western Europe disproportionately, despite the fact that the threat to Western Europe has decreased and our allies' ability to defend themselves has increased.

Until and unless we end this policy, it is the greatest welfare policy yet left and the recipients are our European allies. They continue to drain tens of billions of dollars from us. If they were prepared to take primary responsibility for the defense of Western Europe, we would still have the responsibility in South Korea, in the Middle East and elsewhere.

Mr. Chairman, we could save money with no cost to anybody's security and free up funds for necessary purposes that are going undone at home. For that reason, I will vote against this bill.

Mr. MURTHA. Mr. Chairman, I yield back the balance of my time.

(By unanimous consent, Mr. GILMAN was allowed to speak out of order for 1 minute.)

ANNOUNCEMENT OF THE DEATH OF PAUL O'DWYER

Mr. GILMAN. Mr. Chairman, it is my sad duty to report to this body the passing of an outstanding constituent who is one of the most respected elder statesmen in New York State.

Paul O'Dwyer passed away this morning at the great age of 90. A native of County Mayo, Ireland, he came to America in search of a new life in the wake of the "troubles" in Ireland earlier in this century.

He worked on the docks while working his way through St. John's Law School. He became a champion of civil rights and justice in his homeland, and of independence for Israel.

Paul O'Dwyer sought election to this Chamber in 1946, but was defeated by Jacob Javits. Ironically, 22 years later Paul was the Democratic nominee for

the U.S. Senate in opposition to Senator Javits.

In between, Paul O'Dwyer served as Manhattan Councilman at Large and subsequently as President of the New York City Council. And in later years, Paul O'Dwyer remained a champion of peace and justice in the North of Ireland.

Although Paul and I were on opposite sides of the political aisle, I came to rely on his sage advice, his insightful knowledge and his distinguished concern for the future of our Nation.

Mr. Chairman, we extend our sympathies to Paul's widow, Pat, to his three sons, his daughter, his eight grandchildren and five great-grandchildren, and the many New Yorkers who for many years considered Paul O'Dwyer a hero.

Mr. WELDON of Florida. Mr. Chairman, I want to commend my colleague from Florida, the distinguished Chairman of the National Security Appropriations Subcommittee, for drafting a bill that maintains careful balance between our modernization priorities, our requirement for a trained and ready force, and the needs of our men and women in uniform and their families. This is no easy task. With each new crisis around the world, we ask for more and more from our fighting forces while the amount of money that we provide continues to shrink. So again, I applaud the Chairman of the National Security Appropriations Subcommittee for working hard to ensure that our military is prepared to meet ongoing and new challenges around the globe.

I would also like to commend the Department of Defense for working hard to put into place best business practices wherever possible to squeeze every penny out of its operations. Every penny saved by running the Defense Department better is a penny returned to much needed and underfunded modernization and readiness programs. In particular, I want to commend the National Reconnaissance Office (NRO) for its efforts to procure commercial-like launch services for the GeoLITE and NRO-1 satellite programs. By using existing commercial launch vehicles and commercial payload processing services, NRO can take advantage of cost savings and streamlined procurement schedules that are inherent to commercial purchases and operations.

I strongly encourage the NRO to continue and expand its outsourcing of commercial payload processing services. By lowering the costs while at the same time maintaining flexibility to implement its mission, the NRO is ensuring that it is ready to meet the great demands placed on it by our national security decision makers and our war fighting commanders in chief.

For several decades, even the initials NRO were classified and could not be used publicly. Now, with the end of the Cold War, not only can we talk about the once super secret NRO, we can give the agency credit for its activities, including its push to contract for services like commercial payload processing.

Mrs. FOWLER. Mr. Chairman, I rise to strongly support this amendment.

Yesterday, in a joint hearing by the National Security and International Relations Committees, we learned still more about efforts by China's People's Liberation Army to secure

advanced military technology from the United States. This information included revelations that Chinese officials apparently stole circuit boards containing safeguarded technology from a crashed U.S.-built satellite, as well as reports I brought forward that the administration has approved the sale of equipment to help the PLA encrypt military messages sent via U.S.-built satellites.

Now we hear that the Defense Department is purchasing critical parts for some of our most advanced weapons from the U.S. subsidiary of a Chinese state-owned firm. This is intolerable.

This amendment complements legislation I sponsored last year which passed the House 405-10, requiring the Defense Department to maintain an active list of PLA-owned firms doing business here. I commend the gentleman and strongly urge passage of this measure.

Mr. NETHERCUTT. Mr. Chairman, I rise in support of H.R. 4103. I am proud to serve on the National Security Subcommittee on Appropriations and would like to first acknowledge the outstanding work of Chairman YOUNG and Mr. MURTHA in putting together this legislation that meets so many needs while still falling under our budget limitations. The subcommittee staff also deserves recognition, having worked long hours scrubbing this bill to maximize every defense dollar.

This bill devotes substantial resources to improving the working conditions for our men and women in uniform. Increased funding for maintenance and spare parts has been a priority for our subcommittee and this year was no different. The Administration consistently underfunds these accounts and the Services always identify requirements that exceed the request. I was pleased that we were able to add more than \$200 million over the President's request for aviation spares, \$300 million for real property maintenance, and \$500 million for base operations and support.

This bill provides substantial funds for research and development which will rapidly move next generation technology into the field. Our combat forces will have a substantial edge over opponents in the future because of the investments this bill provides for weapons research as well as for medical research. Enhancing the survivability of those who serve should be our first priority, and I strongly support research which benefits this end. I am pleased that the Committee supported funding for promising ultrasound research, which may revolutionize trauma care by stopping battlefield hemorrhaging with ultrasound waves. The Committee also funded substantial research to address the growing threat posed by chemical and biological weapons. One innovative approach that is funded in this bill would utilize photoacoustic signatures to detect harmful toxins. I am proud that both of these projects will be conducted at the Spokane Intercollegiate Research and Technology Institute, an emerging regional leader in science and technology research.

Medical research also benefits military readiness and morale by ensuring that soldiers in the field stay healthy, while their families are taken care of at home. As the Co-Chair of the Congressional Diabetes Caucus, I support a research project in this bill which will contribute substantially to our understanding of diabetes. The legislation provides a \$6.4 million for the second year of a 2-year pilot demonstration project [PE# 630002] with the Joslin

Diabetes Center, a world leader in diabetes research. This joint project with the Army is pursuing critical research, and soldiers and their families will realize substantial benefits.

This Subcommittee has devoted significant attention to the issues of information security and the Year 2000 problem. The Administration has told the Services to take care of this problem out of hide and didn't request any additional funding, even though January 1, 2000 is only 17 months away. Despite optimistic projections from the services and reassurances from the Administration, reports from GAO, the Defense Science Board and Congressman STEVEN HORN have unanimously proclaimed that current progress is inadequate. Failure of defense systems could be catastrophic and I do believe that identifying funding for this situation is an emergency. But this bill also contains strong language which will contribute to a Y2K solution. No new funds can be spent on developing or modernizing any information technology system unless it is certified as Y2K compliant. The bill also requires the Department to develop contingency plans for Y2K failure and directs aggressive testing and simulation to ensure that we are ready in time.

This is an excellent bill, Mr. Chairman. While there are still many unfunded requirements facing our armed forces, this legislation does an outstanding job of addressing the highest priorities within the constraints of the Balanced Budget Agreement. I strongly urge my colleagues to support this legislation.

Mr. HARMAN. Mr. Chairman, I rise in support of this year's defense appropriations bill. It continues the trend of declining defense spending since the end of the Cold War, forcing the committee to make a lot of tough choices. As a member of the National Security Committee, I know that many of the choices in this bill reflect directions set in the authorization bill.

When I came to this House nearly 6 years ago, my district was reeling from defense cuts. Yet today it is thriving, and has recovered by using its expertise in commercial fields. California's 36th Congressional District demonstrates that there is life after defense downsizing.

Mr. Chairman, I fought to establish the Dual Use Science and Technology program so that we could build skills that would protect defense workers when defense spending shrinks. This is not just important for the defense industry and the workers in my district, but for the country and its defense industrial base. Commercial applications allow us to maintain critical technological expertise in the industrial base, so that we can call upon it in times of need. I was disappointed to see cuts made in dual-use programs in this bill. For the reasons I've just described, it's exactly the wrong thing to cut in a shrinking defense budget.

As defense spending ebbs, inefficiencies in the DoD also become more visible, and more harmful. Serious problems are emerging in modernization and readiness, but we still maintain excessive infrastructure. This House must tenaciously pursue cost-savings and eliminate bloated bureaucracies. We cannot afford to support waste when we have such urgent modernization and readiness needs.

Finally, let me raise one more efficiency issue. As our forces shrink, we must fully embrace women in the military—we need to fully

utilize all military talent in order to field a ready force. Secretary Cohen and the Service Chiefs feel it is crucial to "train the way we fight" and strongly advocate gender-integrated training. I'd urge Members not to substitute Congressional judgment for their expertise. As we learned many years ago, separate but equal is anything but equal.

I urge support of the bill.

Mr. BENTSEN. Mr. Chairman, I rise today to express my strong support for the inclusion of full funding for the Disaster Relief and Emergency Medical Services (DREAMS) telemedicine project in H.R. 4103, the Department of Defense Appropriations legislation. I wish to thank Chairman YOUNG and Ranking Member Murtha for their support of this project. This project is a cooperative effort of the U.S. Army Medical Research and Materiel Command, the University of Texas-Houston Health Science Center, and Texas A&M University. As the Representative for the University of Texas-Houston Health Science Center, I am pleased that this legislation includes sufficient funding for this critical medical research project.

DREAMS is an advanced telecommunications project designed to improve and speed emergency treatment for injured patients, especially in military battlefield and civilian disaster settings. The project aims to utilize computer, telemedicine, and satellite navigation technology (Global Positioning System) to improve patient transport, as well as on-site and in-transit diagnosis and treatment. It also aims to improve detection, diagnosis, decontamination, and treatment for chemical and biological warfare agents, and to develop new diagnostic methods and therapies for shock and injuries. DREAMS originated in Houston because Houston has a high incidence rate for penetrating and blunt trauma, industrial accidents, floods, and hurricanes.

The DREAMS project will demonstrate, in both military and civilian sectors, how to save lives and reduce costs. This project includes three interrelated components: (1) emergency medical services; (2) chemical and biological warfare defense; and (3) diagnostic methods and therapies for shock injuries. The emergency medical services will test interactive telemedicine technologies and treat patients in both urban and rural settings. DREAMS will also do extensive research to develop chemical sensors for on-site diagnosis of toxic substances and biological decontamination of chemical warfare agents. The third part of this project will research new treatments for patients who cannot get advanced care quickly and determine mechanisms to extend life beyond the "golden hour."

Congress provided \$8 million for this cutting-edge research in Fiscal Year 1997. I am pleased that this bill, H.R. 4103, would provide an additional \$9.985 million for this project. It is also important to note that the Senate Defense Appropriations legislation includes \$10 million for this project.

This project will also increase the survivability of America's soldiers wounded on the battlefield, as well as civilians injured in industrial and natural disasters. I strongly urge my colleagues to support the DREAMS project as part of Fiscal Year 1999 Defense Appropriations legislation.

Mr. BONILLA. Mr. Chairman I rise in support of the fiscal year 1999 Defense Appropriations bill. This legislation provides essential funding for our military. Chairman Young has

done a remarkable job addressing the most significant shortfalls confronting the armed services.

Today we are hearing criticism of this legislation from two quarters, the bean counters and the dreamers. The dreamers believe we live in an age when the lion lays down with the lamb and we should be the lamb. It is a beautiful vision, one we all wish was true. Unfortunately, the reality is that it is not. If we follow this path we will soon become the lamb chop and put our liberties at grave risk.

The bean counters keep telling us we can't afford to maintain our military. The bean counters tell us we can't afford weapons modernization, we can't afford to give our troops decent pay, we can't afford to maintain our bases. They couldn't be more wrong.

We can't afford not to provide for our defense. America's history tells us that the cost in lives of not being prepared is just too great. We are failing in our duty as congressmen if we fail to provide adequately for our military.

If there is any fault in this bill it is that we should do more. I hope some of you will work with me to fix our budget and insure the future security of our nation. The fact is we do not have sufficient resources to maintain short term and long term readiness. Please join me in supporting this excellent legislation and let's work together to increase the resources available to our military in the future.

Ms. GRANGER. Mr. Chairman, I rise today in strong support of this Defense Appropriations package. And let me publicly and personally thank Chairman BILL YOUNG for his hard work on this important National Defense bill.

It has been said that America will only remain the land of the free if it remains the home of the brave.

Mr. Chairman, a few weeks ago I saw some of our brave young soldiers who are defending American interests in faraway places like Bosnia. After talking to them, I am reaffirmed in my conviction that our soldiers and sailors are the best and the brightest in the world.

However, I believe that if we have the best troops, we should also have the best training, equipment, and benefits. After all, no first class nation can have a second class military.

Mr. Chairman, I do not believe that the budgetary constraints of last year's balanced budget provide the kind of support that our troops deserve and our interests demand.

When John F. Kennedy was President, 52 cents out of every Federal dollar spent was devoted to National Defense. Today, that number is 16 cents out of every dollar.

Now before I go any further, let me be perfectly clear—I support this bill even though I believe we must do much more to invest in our National Security. But at least this bill stops the ten year decrease in defense spending. And it does so in large part because of the outstanding leadership of Chairman YOUNG.

In particular, I am pleased that this bill funds important priorities that are manufactured in my home district in Texas. Products like the F-16, the V-22, and the Kiowa Warrior are indispensable to our national security.

Mr. Chairman, these projects are important for my district. But they are vital for our country.

Once, again, I want to thank the Chairman for his hard work on this issue. And I look forward to working with all of my colleagues to

do even more in the coming years for our national defense.

And I would close by responding to a perennial question that we hear so often during national security debates. We hear the question, "can we afford to pass this bill." Mr. Chairman, I would simply respond by saying, "we can't afford not to pass this bill."

Mr. VENTO. Mr. Chairman, the Republican led Appropriations Committee has once again produced a substantially increased military spending bill that reneges on the Balanced Budget Agreement of 1997. When all the accounting schemes are pushed aside, we find that it spends \$4.4 billion more for fiscal year 1999 than called for under the carefully crafted budget outlay cap enacted by Congress less than a year ago.

This bill illustrates that the House Republican Leadership has chosen to ignore the professional judgement of the CBO on how to account for the spending in this bill. The result is to simply not count billions in military spending that the CBO determined should be counted. I will remind my Colleagues that just two-and-a-half years ago this same Republican leadership went so far as to shut down the government over its insistence that the President and the Congress use no other spending blueprints than those made by the CBO.

Furthermore, this bill is filled with projects selected more based on the district in which the money will be spent, rather than how the product will be used by our fighting forces.

One pet project is \$432 million added in this bill for seven C-130J aircraft that were not even requested by the Pentagon. This continues past practices of adding substantial sums for these planes that are built in Georgia.

The unit cost of the C-130J is an alarming \$60 million per plane. This is higher than the \$48 million cost for a modern, state of the art F-15E fighter plane that is essential for our national security. Of the reported 28 C-130J aircraft on order by the U.S. military, not one has been delivered due to development and mechanical problems. I ask my Colleagues how this program evolved from what was supposed to be a routine upgrade to a major budget busting development effort. At a time when it is incumbent upon Congress to deal responsibly with the budget for our national defense, the addition of seven C-130J aircraft is a frustrating and fiscally irresponsible maneuver to add pork to specific congressional districts.

The recommended rule outlined for this year's Defense Appropriations strikes a provision which provides \$1.6 billion in emergency funding for the Defense Department and the Intelligence Communities to handle the Year 2000 (Y2K) date change. The Y2K issue is a national security priority and should be addressed in this bill.

Similarly, the Department of Defense Appropriation measure provides no funding for the U.S. military role in Bosnia and ignores the Administration's request of \$1.9 billion.

In this bill, the Republican Leadership has reneged on its own budget policies and has increased defense spending nearly \$4.4 billion more than the total specified for 1999 under the Balanced Budget Act. Proponents of this bill apparently believe that our military is underfunded and unprepared to meet the challenges of the 21st Century. However, they should know that the President's defense budget is capped by the Balanced Budget Act

most of them voted for less than a year ago. Members knew voting for the agreement meant there would be a continued reduction in defense spending through 2002.

In addition to the \$4.4 billion, the \$1.6 billion for the Y2K computer problem and the \$1.9 billion for Bosnia, this total translates into a measure that is nearly \$8 billion over the 1997 Balanced Budget Agreement.

Proponents of this bill argue that a quarter of a trillion dollars of defense spending is just not enough, I disagree. This military budget is already much too high. The current level is approximately 82 percent of what was spent during the Cold War. Now it is appropriate to have a significantly lower budget with the global threat so much smaller. I will point out that Iran's military budget is less than \$5 billion. The new government in India recently raised its military budget 14 percent—to all of \$9.9 billion. Moreover, the United States spends more than twice as much on the military as the next six or eight likely adversaries (China, Russia, Iran, Iraq, Syria, Libya, North Korea and Cuba combined).

Even though the Cold War is over, there are still massive amounts of wasteful, inefficient and totally unnecessary military spending that should be eliminated first before consideration is given to additional funding. We still see reports of the Pentagon's wasteful inefficient spending. For instance: the Pentagon is still paying \$75 for 57-cent screws and \$38,000 for \$1,500 worth of aircraft springs and the military has far more infrastructure than it needs. Even after completion of several rounds of base closures, the Pentagon calculates that it still has a 23 percent excess base capacity, draining off billions in unnecessary expenditures.

Beyond the dramatic waste on common sense items is the loss of funds down the drain on the Ballistic Missile Defense Organization (BMDO) programs. Such programs are proven failures that are pegged for billions of dollars more than requested in this bill. Furthermore, four more New Generation Nuclear Attack Submarines that carry the D-5 missiles are appropriated. This represents yet another \$10 billion expenditure towards no justified positive purpose.

The numerous programs in this bill raise many questions. The problem is that the Department of Defense is not being held accountable by the Congress or the Administration. Every new mission explodes into programs that cost billions of dollars. Instead of inventing new missions, we should focus on the basics.

As our economy is booming and democracy spreads globally, Congress should look to advance resources in people's programs. I support a strong, efficient and prepared military force, but there is still much work to be done in cutting wasteful and unnecessary defense spending. We should invest in our children through adequate health care and education, prepare for the baby boomers retirement by protecting the solvency of the Social Security and Medicare Trust Funds, provide affordable housing for low-income persons and the elderly and protect our earth's natural resources. I urge my Colleagues to oppose this bill.

Mr. FRELINGHUYSEN. Mr. Chairman, I rise today in support of H.R. 4103, the Department of Defense Appropriations Bill for Fiscal Year 1999. I want to commend my colleague, the gentleman from Florida, Chairman BILL

YOUNG, for all his hard work on this bill. He has made tough decisions in order to provide funding for our armed forces and for the equipment they need to protect our Nation. I also want commend the staff of the Defense Appropriations Subcommittee who assisted Chairman YOUNG in putting this legislation together.

According to both the Defense authorizing and appropriations committees, spending on defense has decreased for the 14th straight year, in real terms. Despite the end of the cold war earlier this decade, we still find American troops deployed across the globe, from Eastern Europe to Asia to Africa. In fact, I was recently told by one Army officer that there has been a 300 percent increase in deployments at the same time there has been a 40 percent shrinkage in the size of the Army. As a result, troops are deployed longer, maintenance and repair work is delayed, and research and development initiatives are taking a substantial hit.

American companies are learning to do more with less, and our military has become more cost-efficient as well. However, there is a point at which we can only do less with less. If the President keeps committing our troops to peacekeeping missions overseas, and continues to freeze funding for the Department of Defense, we could begin to compromise the safety and readiness of our armed forces.

When the President sends our military overseas, money is diverted from other important initiatives, including research and development. As we try to prepare and equip our troops for the battlefields of the future, countless engineers are working in government labs and research facilities to develop the weapons, the ammunition, the vehicles and the technology our armed forces need to defend the United States. The military's research and development is critical to keeping our men and women in uniform safe and well-equipped wherever they serve, whether home or abroad.

Further compromising the military's, and especially the Army's, ability to provide our troops with the tools they need on the battlefield are the cuts proposed under the Quadrennial Defense Review, or QDR. These QDR cuts threaten the very fabric of our research and defense infrastructure. Not only will they decimate the current corps of engineers working on sensitive mission-critical projects, they also hamper the Army's ability to recruit and train the future engineering "brain trust" needed to help develop the next generations of military hardware and equipment.

If these QDR cuts are implemented, it would have a detrimental effect on mission-critical projects such as the Crusader field Artillery System. This reach and development effort will provide the Army of the future with much-needed heavy artillery support. I am pleased that the Committee has provided full funding for this program which is located at Picatinny Arsenal in my district.

The Crusader system, which will consist of both a self-propelled, fully automated 155m Howitzer and a resupply vehicle, will provide efficient, accurate and reliable fire support to our troops on the battlefield. Unlike the existing Paladin tank, the Crusader will have a fully-automated loading capability. The Crusader will be faster than the Paladin, and its guns are more accurate at a much farther distance. In recent tests, the Crusader's gun was

able to fire an impressive 10 rounds per minute for three to six minutes, without malfunctioning. And, furthermore, less military personnel are needed to man the Crusader.

I am especially pleased because much of the research and development work on the Crusader project is being done in the laboratories of Picatinny Arsenal in the 11th Congressional District. Since the Revolutionary War, Picatinny has been providing our armed forces with ammunition. Today, they may no longer manufacture conventional ammunition, but the dedicated and innovative workforce at Picatinny are developing other tools to meet the munition and firepower needs for both Army XXI and the Army After Next. From "smart ammunitions" to the soldiers' hand-held weapon of the future, Picatinny has been recognized and awarded for their research and development efforts and contributions to our military capabilities. I was recently told that Picatinny is responsible for 1400 of the 3400 weapons systems developed under TACOM, the Tank Automotive And Armaments Command which oversees much of the Army's research and development initiatives.

Another important research and development project funded in this bill is the soldiers' weapon of the future, the Objective Individual Combat Weapon, or OICW. The lightweight OICW can, in the near future, replace three existing, divergent weapons currently in use by the military: M16A2 rifles, M4 carbines and M203 grenade launchers. It will have the ability to accurately shoot both hidden and moving targets. With the flip of a switch, soldiers will be able to change from the munitions-firing weapon to a conventional rifle. The two weapons can be separated, and the lower barrel can be used as a stand-alone gun. This work is done at Picatinny using the most advanced techniques and technologies, hence these dollars will continue this development.

Mr. Chairman, every day our men and women in uniform put their lives on the line to defend us. They deserve to have the tools they need to protect us, and should be compensated for their work. We cannot forget our debt to them, and we must work to provide them with the supply they need to do their jobs. We owe them nothing less.

Those in the civilian work force at Picatinny, likewise, do their part to keep our young men and women safe wherever they are stationed, where wars may be fought, with the best equipment and technology possible.

Today we vote to provide funds, support our soldiers and all those who prepare and equip them. An affirmative vote assures that this critical work continues.

Mr. YOUNG of Florida. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule and the amendments printed in House Report 105-996 are adopted.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

Consideration of Section 8106 shall not exceed 1 hour. The Chairman of the

Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1999, for military functions administered by the Department of Defense, and for other purposes, namely:

TITLE I
MILITARY PERSONNEL
MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; \$20,908,851,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; \$16,560,253,000.

MILITARY PERSONNEL, MARINE CORPS

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; \$6,241,189,000.

MILITARY PERSONNEL, AIR FORCE

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; \$17,201,583,000.

RESERVE PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund; \$2,171,675,000.

RESERVE PERSONNEL, NAVY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund; \$1,427,979,000.

RESERVE PERSONNEL, MARINE CORPS

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund; \$403,513,000.

RESERVE PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund; \$850,576,000.

NATIONAL GUARD PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for

payments to the Department of Defense Military Retirement Fund; \$3,413,195,000.

NATIONAL GUARD PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund; \$1,372,997,000.

Mr. YOUNG of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. Are there any amendments to title I?

There being no amendments, the Clerk will read.

The Clerk read as follows:

TITLE II

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed \$11,437,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; \$16,936,503,000 and, in addition, \$50,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund: *Provided*, That of the funds appropriated in this paragraph, \$596,803,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, NAVY

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed \$5,360,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes; \$21,638,999,000 and, in addition, \$50,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund.

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law; \$2,585,118,000: *Provided*, That of the funds appropriated in this paragraph, \$45,415,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, AIR FORCE

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed \$7,968,000 can be used for emergencies and extraordinary expenses, to be ex-

pendent on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes; \$19,024,233,000 and, in addition, \$50,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund: *Provided*, That of the funds appropriated in this paragraph, \$208,125,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law; \$10,804,542,000, of which not to exceed \$25,000,000 may be available for the CINC initiative fund account; and of which not to exceed \$29,000,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes: *Provided*, That of the funds appropriated in this paragraph, \$450,326,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, ARMY

RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; \$1,201,222,000: *Provided*, That of the funds appropriated in this paragraph, \$3,600,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, NAVY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; \$949,039,000: *Provided*, That of the funds appropriated in this paragraph, \$400,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, MARINE CORPS

RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; \$119,093,000: *Provided*, That of the funds appropriated in this paragraph, \$2,100,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, AIR FORCE

RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; \$1,735,996,000.

OPERATION AND MAINTENANCE, ARMY

NATIONAL GUARD

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and

related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft); \$2,570,315,000: *Provided*, That not later than March 15, 1999, the Director of the Army National Guard shall provide a report to the congressional defense committees identifying the allocation, by installation and activity, of all base operations funds appropriated under this heading: *Provided further*, That of the funds appropriated in this paragraph, \$105,500,000 shall not be obligated or expended until authorized by law.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things, hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; \$3,075,233,000.

OVERSEAS CONTINGENCY OPERATIONS

TRANSFER FUND

(INCLUDING TRANSFER OF FUNDS)

For expenses directly relating to Overseas Contingency Operations by United States military forces; \$746,900,000: *Provided*, That the Secretary of Defense may transfer these funds only to operation and maintenance accounts within this title, to the Defense Health Program, to procurement accounts, and to working capital funds: *Provided further*, That the funds transferred shall be merged with and shall be available for the same purposes and for the same time period, as the appropriation to which transferred: *Provided further*, That the transfer authority provided in this paragraph is in addition to any other transfer authority contained elsewhere in this Act.

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces; \$7,324,000, of which not to exceed \$2,500 can be used for official representation purposes.

ENVIRONMENTAL RESTORATION, ARMY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, \$342,640,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such

funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, NAVY
(INCLUDING TRANSFER OF FUNDS)

For the Department of the Navy, \$281,600,000, to remain available until transferred: *Provided*, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, AIR FORCE
(INCLUDING TRANSFER OF FUNDS)

For the Department of the Air Force, \$379,100,000, to remain available until transferred: *Provided*, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, DEFENSE-WIDE
(INCLUDING TRANSFER OF FUNDS)

For the Department of Defense, \$26,091,000, to remain available until transferred: *Provided*, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, FORMERLY
USED DEFENSE SITES
(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, \$195,000,000, to remain available until trans-

ferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

OVERSEAS HUMANITARIAN, DISASTER, AND
CIVIC AID

For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 2547, and 2551 of title 10, United States Code); \$56,111,000, to remain available until September 30, 2000: *Provided*, That of the funds appropriated in this paragraph, \$8,800,000 shall not be obligated or expended until authorized by law.

FORMER SOVIET UNION THREAT REDUCTION

For assistance to the republics of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise; \$417,400,000, to remain available until September 30, 2001.

QUALITY OF LIFE ENHANCEMENTS, DEFENSE

For expenses, not otherwise provided for, resulting from unfunded shortfalls in the repair and maintenance of real property of the Department of Defense (including military housing and barracks); \$850,000,000, for the maintenance of real property of the Department of Defense (including minor construction and major maintenance and repair), which shall remain available for obligation until September 30, 2000, as follows:

Army, \$219,688,000;
Navy, \$244,507,000;
Marine Corps, \$48,901,000;
Air Force, \$194,926,000;
Army Reserve, \$47,579,000;
Navy Reserve, \$21,055,000;
Marine Corps Reserve, \$7,600,000;
Air Force Reserve, \$9,871,000;
Army National Guard, \$37,535,000; and
Air National Guard, \$18,338,000:

Provided, That none of the funds appropriated in this paragraph shall be obligated or expended until authorized by law.

Mr. YOUNG of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. Are there any amendments to title II?

There being no amendments, the Clerk will read.

The Clerk read as follows:

TITLE III
PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$1,400,338,000, to remain available for obligation until September 30, 2001.

MISSILE PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$1,140,623,000, to remain available for obligation until September 30, 2001.

PROCUREMENT OF WEAPONS AND TRACKED
COMBAT VEHICLES, ARMY

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$1,513,540,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$5,902,000 shall not be obligated or expended until authorized by law.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$1,099,155,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$45,700,000 shall not be obligated or expended until authorized by law.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of not to exceed 37 passenger motor vehicles for replacement only; and the purchase of 54 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$230,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$3,101,130,000, to remain available for obligation until September 30, 2001.

Mr. YOUNG of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill through page 23, line 7, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; \$7,599,968,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$179,121,000 shall not be obligated or expended until authorized by law.

Mr. OBEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise at this point to discuss a ludicrous priority which I find in this bill, and let me put it in context.

Last year, even though the Speaker described our intelligence budget as being inadequate, nonetheless, a Republican-controlled Congress cut the intelligence budget further, to a lower point than the level that the Speaker described as being inadequate.

The Congress did that for a number of reasons. One of those reasons was to pay for an additional destroyer that the majority leader in the Senate wanted built in his State. And another reason was to fund a number of C-130s built in the State of Georgia, a matter of some interest to the Speaker.

This year, the top priority request of the Navy was to replace its aging F-14 airplanes with the next generation F-

18A, E and F aircraft. Instead, this bill cut three of those aircraft in order to provide room for seven new C-130Js which the Pentagon did not ask for. Those C-130s happen to be built in the State of Georgia.

Mr. Chairman, the issue is not whether the C-130s, which would be going to various National Guard units by and large all around the country, the issue is not whether those planes are good planes. They are. The issue is not whether or not they would be used for good missions. They would be. The issue is whether or not giving the National Guard those seven additional planes, which were built by the contractor before anybody even asked them to build them, the issue is whether those planes are the best use of scarce taxpayers' dollars when we have an obligation to try to make certain that we spend those dollars in a way which will provide the greatest personal security for our military fighting personnel.

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If this bill were responsible, it would use \$35 million of the money that was used for those 7 C-130s, it would use \$35 million to modernize some existing C-130s and give those to the National Guard units around the country, and then it would use the remaining dollars to provide the purchase of the replacements for the F-14s that the Pentagon asked for in the first place.

Now, replacing the F-14A is the Navy's number one priority for a very good reason. The F-14 has been involved in 138 class A flight problems in the last decade. Since 1991, 32 F-14s have gone down.

In my judgment, our front line flyers who use those planes are at risk. Even if we provided all of the funds that the Navy asked for for this plane, the first of these planes would not actually show up on carrier decks until the year 2002. So even with those funds, the Navy will need to live with their old F-14As for another 4 to 10 years minimum.

As the Navy said in its presentation, denying these three planes will, "have a direct negative impact on the warfighters in the fleet, hurting the fleet's operational capability, safety, readiness and maintainability."

Now, I had intended to offer an amendment today which would have eliminated these additional C-130s and moved that money back where it ought to be so that we can replace these aged F-14s.

The problem is that, under the rules, for technical reasons, that amendment would not be in order. And so I am not, under the rules of the House, in a position where I can offer that amendment and still respect the rules of the House. I am not going to offer it. But I would hope that the committee, when they go to conference, will recognize that this is a mistake, this is not where our dollars ought to go if we are going to do the best job possible of defending the

physical security of our military personnel.

We do not need more pork. We need more teeth. And it seems to me that the committee has made a major mistake in putting the money where they have. I would hope that the committee would change its judgment when it goes to conference. I think that is the least that the Congress can do.

Mr. BEREUTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentleman from Wisconsin, distinguished ranking member of the Committee on Appropriations, has raised an interesting point about abuse in this process. And I want to talk about an abuse to the American taxpayer that is a part of this bill.

When I do this, I absolve the chairman, distinguished Member from Florida, and the ranking member, distinguished Member from Pennsylvania, for the problem in this bill, because it is not of their doing.

I had an opportunity to vote against the rule, and I did that because it protects this provision that ought to be stricken here from a point of order. I am referring to the transfer of 50 Navy ships, 50 Navy ships. It is an opportunity to raise \$637 million for the Defense Department, and I am in favor of that additional expenditure.

However, ordinarily when those ships are transferred, sold, leased, sold for a small amount of money, we are talking about 50 ships, \$637 million, so my colleagues know we are not getting much money for those ships, that money goes back to the Treasury.

What has happened in this instance, well, that is not happening. It is, for example, going directly to DOD, not only bypassing the authorizing committee, where we looked last year at some very inappropriate transfers, inappropriate in that we were not getting the money back for the Treasury that we ought to get, but we will not have that opportunity unless the chairman has worked out something in a colloquy which took place, I know, a few minutes ago between the chairman of the Committee on International Relations and the chairman of the Appropriations subcommittee. For anything that is worked out there, I express my appreciation to the gentleman.

Let me tell you where these ships are going. One to Argentina, 3 to Brazil, 2 to Chile, 2 to Mexico, 1 to the Philippines, 1 to Portugal, 2 to Spain, 10 to Taiwan, 1 to Venezuela. I will come back to a couple more. Interestingly, one that is going to Spain is the *Harlan County*. The *Harlan County* was that ship that went down to Port-au-Prince. It ought to be bronzed as a recognition of the Clinton administration's policy with respect to national security, because Members may remember a few thugs on the docks in Port-au-Prince turned back the American forces, not because of lack of courage of those forces, because they were pulled back by the Pentagon at the direction of the administration. That one ought to be bronzed.

But that is not really the point I want to make. What really is, I think, very dangerous about this provision is that 14 ships are going to Turkey and 11 are going to Greece. If you have not followed what is going on in Cyprus lately, with both sides bringing high performance aircraft, with the Greek Cypriots apparently about to bring in missiles from Russia with Russian technicians, you would wonder why our two NATO allies are behaving this way, and you certainly would wonder about providing them more firepower.

Now, I noticed that one of those ships and perhaps as many as three or four are *Kidd* class guided missile destroyers. This is not an ancient piece of equipment. This is a very sophisticated set of weaponry, very expensive. And I really do not think that the conduct of Greece and Turkey, our two good NATO allies, justifies sending that kind of firepower to them at this moment.

You can blame one side or the other and undoubtedly blame goes on both sides, but for us to make this transfer at this time, bypassing all the normal procedures, is not only bad for the taxpayer, it is a reflection of the archaic and convoluted budget process we have around here that is forcing us to do these end runs to put the resources where we need to put them, but you are actually building a dangerous arms race between Greece and Turkey. And that ought not happen.

If I had an opportunity to raise a point of order, if the rule did not prevent me from doing that, I would do that.

I hope that the American news media and the American people are looking at this situation and saying this is not only disgraceful, this is not only abuse of the taxpayers funds, this is not only abuse of the process around here, this is feeding a dangerous arms race between Greece and Turkey.

I thank my colleagues for listening. I regret the fact that we are doing this. It is outrageous.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. BEREUTER. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Chairman, I would like to say that I absolutely, totally agree with what the gentleman has just said. That is why I listed this as one of my concerns in the supplemental views that I filed with this bill.

Under the normal budget process, proceeds from the sale of an asset are not allowed to be spent again by an agency. They are credited to the general fund of the Treasury under normal circumstances to buy down the national debt. I think it is an incredibly ill-advised action to provide these ships to Turkey and Greece, given what is happening in the Aegean. I think it sends exactly the wrong signal to both sides.

I thank the gentleman for raising the point.

Mr. SOLOMON. Mr. Chairman, I move to strike the last word.

I take the floor to say that more often than not I agree with my good friend, the gentleman from Nebraska (Mr. BEREUTER). But when the gentleman stands up and talks about this outrageous action, I just have to question him on that.

We are in a period of time in our government when things are changing. Our military budget today is underfunded by probably \$30 or \$40 billion a year. Not over 5 years or 10 years, \$30 or \$40 billion a year. And there are those of us in this Chamber right now that are doing everything we can to find every nickel we can to try to keep our military preparedness such that we can defend the strategic interests of this country around the world.

Now I heard my good friend, the gentleman from Nebraska (Mr. BEREUTER) saying this is an outrageous situation. But he is criticizing this because the Treasury is not going to get the money. The DOD is going to get the money, the defense, the Pentagon.

That is the whole idea behind this thing, Mr. Chairman. Yes, they are going to get it. And we are going to keep it that way. We are going to keep trying to build it up so that we can, when we are sending young men and women into harm's way, God forbid that that should happen, that they have the best state-of-the-art equipment that money can buy.

Let me tell my colleagues something else. It seems to me the list of countries that Mr. BEREUTER just read off, seems to me they are all friends of ours. They are all NATO allies or other friends in the Western Hemisphere or in the Asian-Pacific area.

Now, what is wrong with selling our friends this kind of military equipment? Would he rather have them buy it from China or would he rather have them buy it from Russia? We have enough problems now with people buying them from Russia. This is expendable equipment that we do not need, and we need to sell it to our friends and we need to maintain that money in the defense budget.

Now, I do not know what all this argument is about. I know we have had a colloquy with my good friend, the gentleman from New York (Mr. GILMAN) and with others, but the point is that time is of the essence here. And maybe there will be a colloquy with the chairman of the Committee on International Relations, who is an outstanding leader in this body, and maybe we will get some kind of understanding. But let us not try to scuttle this. We need this right now.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I do not know if the gentleman heard this when I first started my remarks, but I said I am perfectly willing to put an additional \$600- to \$700 million in the Defense Department appropriations. I am for that. I admitted that right up front.

Mr. SOLOMON. Reclaiming my time, we tried and we could not get it. A number of us who were going to vote against the budget because the caps are so low on defense spending now, we were going to do something that we never do. We were going to go against our party. We could not get it.

Finally we got a commitment from the Speaker that when we do go to conference that the Speaker will stick up for us and will get us money beyond the scope, beyond what we are talking in the Senate version, beyond what was offered in the House version. We cannot even get \$200 million more, much less \$600 million more.

Mr. BEREUTER. Mr. Chairman, if the gentleman will continue to yield, I referred to the arcane and unfortunate procedures we have to go through with the budget process around here, I would say to the gentleman. But the gentleman remembers, as a former member of the Committee on International Relations, we have an opportunity to look at those sales ordinarily. And last year we had an opportunity to look at some proposed transfers, and we dramatically increased the funds coming to our Treasury as a result of our review. The Navy was underpricing them. That was good for the taxpayers.

I would ask the gentleman, does he think it is good to send either to Greece or Turkey *Kidd* class guided missile destroyers at this stage?

Mr. SOLOMON. Mr. Chairman, yes, I do. I think we need a strong foreign policy that will say to two of the strongest allies that we have had over the history of this Nation, and that includes Turkey and that includes Greece, although Greece has sometimes been under some kind of Communist leadership with a leader that had some very nasty things to say about America, but by and large they are good allies. If we have a foreign policy, if we have a strong foreign policy, we have nothing to worry about with those two allies.

Mr. BEREUTER. Mr. Chairman, the gentleman recalls how I stand side by side with him in the North Atlantic Assembly and support Greece and Turkey, and sometimes we protect Turkey alone among some of those charges, the gentleman and I.

Mr. SOLOMON. That is correct.

Mr. BEREUTER. And I think they are tremendous allies. Unfortunately, they seem to be at each other's necks too much. That is not good for the alliance. So my concerns are what we are doing at the immediate point, when we have this high degree of intense concern in the Aegean, particularly centered around Cyprus.

Mr. SOLOMON. Mr. Chairman, I respect the gentleman.

Mr. MANZULLO. Mr. Chairman, I move to strike the last word.

I first of all I want to commend the gentleman from New York (Mr. SOLOMON) for his rigorous and correct defense of an underfunded defense bill.

What bothers me more than anything is the manner in which this occurred. The Committee on International Relations, every year since I have been here, which has been going on 6 years, will be presented with a petition from the Department of the Navy in the form of a bill for the sale or exchange or gift of ships. And about four years ago there was a hearing going on and somebody came from the Department of the Navy with a list of 10 ships that they were going to give away. And I asked the Navy, I said, have you ever thought about selling or leasing these ships? And they said, well, you know, that is a pretty good idea.

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So the Navy pulled the bill. A couple months later, they were back before the Committee on International Relations, this time with a bill that would sell or lease 10 ships with a net to the American people of \$485 million. That provision that occurred every year, I believe, in either the State Department authorization or the foreign ops bill became known as the Manzullo amendment.

The committee members would get together. They would take a look at these excess ships. Affix a value to them and show that as an accounting function in State Department authorization.

Though it is laudable that money be used to enhance our military, what bothers me is our committee was not allowed to have two hearings. The first hearing was on the advisability and the actual accounting methods and appraisal methods of the ships. The second hearing was on the advisability of the countries to whom they were sold under the present circumstances.

The government is selling 48 ships at an average price of \$13 million. That seems to be an awful, terrible bargain. I do not know what procedure can be done at this point, but if the Navy is listening, I am going to be demanding in some way or the other tomorrow a full and complete accounting and an appraisal as to each and every ship so we can demonstrate to the American people whether or not these ships are being appraised.

Mr. CUNNINGHAM. Mr. Chairman, will the gentleman yield?

Mr. MANZULLO. I yield to the gentleman from California.

Mr. CUNNINGHAM. Mr. Chairman, I recently returned from Greece. And I met with the Prime Minister from Greece, and I also met with the Defense Minister. They bought German tanks. They have an alliance with Germany. It goes beyond what I think the gentleman is talking about, because, for us to sell U.S. product, for us to sell F-15s and the Strike Eagles to Greece and even F-18s, we had to throw into the package not only kits, but Corvettes as well, or they are going to buy other product.

So when you are talking about taxpayers, we are going to have people in

St. Louis working because we are going to sell extra aircraft. Those aircraft that we can buy cheaper, the U.S. military is going to benefit from that.

I am not sure about the process with the gentleman's committee, but I am just letting him know that the reasons for it is, if we can have cheaper airplanes for our services and provide, I am a little different on the issue, I want the Turks out of Northern Cyprus. They invaded in 1974, and they ought to get their rear ends out, and the Greeks ought to kick them out if they do not move.

Mr. MANZULLO. Mr. Chairman, if I can reclaim my time, the gentleman may be very well correct and probably is as to the reason these ships were thrown in; but at the minimum, the Committee on International Relations deserve notice and opportunity to have, at the minimum, a joint hearing on this issue.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

WEAPONS PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; \$1,191,219,000, to remain available for obligation until September 30, 2001.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$473,803,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$21,835,000 shall not be obligated or expended until authorized by law.

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; \$5,973,452,000, to remain available for obligation until September 30, 2003: *Provided*, That additional ob-

ligations may be incurred after September 30, 2003, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: *Provided further*, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of not to exceed 246 passenger motor vehicles for replacement only; and the purchase of one vehicle required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$225,000 per vehicle; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; \$3,990,553,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$21,046,000 shall not be obligated or expended until authorized by law.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of not to exceed 37 passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; \$812,618,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$120,750,000 shall not be obligated or expended until authorized by law.

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; \$8,384,735,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$165,658,000 shall not be obligated or expended until authorized by law.

MISSILE PROCUREMENT, AIR FORCE

For construction, procurement, and modification of missiles, spacecraft, rockets, and

related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; \$2,191,527,000, to remain available for obligation until September 30, 2001.

PROCUREMENT OF AMMUNITION, AIR FORCE

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; \$388,925,000, to remain available for obligation until September 30, 2001: *Provided*, That of the funds appropriated in this paragraph, \$5,298,000 shall not be obligated or expended until authorized by law.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 267 passenger motor vehicles for replacement only; the purchase of one vehicle required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$240,000 per vehicle; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; \$7,034,217,000, to remain available for obligation until September 30, 2001.

PROCUREMENT, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 346 passenger motor vehicles for replacement only; the purchase of 4 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$165,000 per vehicle; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; \$2,055,432,000, to remain available for obligation until September 30, 2001: *Provided*, That not less than \$109,455,000 of the funds appro-

riated in this paragraph shall be made available only for the procurement of high performance computing hardware: *Provided further*, That of the funds appropriated in this paragraph, \$92,566,000 shall not be obligated or expended until authorized by law.

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces; \$120,000,000, to remain available for obligation until September 30, 2001: *Provided*, That the Chiefs of the Reserve and National Guard components shall, not later than 30 days after the enactment of this Act, individually submit to the congressional defense committees the modernization priority assessment for their respective Reserve or National Guard component.

TITLE IV

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment; \$4,967,446,000, to remain available for obligation until September 30, 2000: *Provided*, That of the funds appropriated in this paragraph, \$175,449,000 shall not be obligated or expended until authorized by law: *Provided further*, That of the funds made available under this heading, \$10,000,000 shall be available only to commence a live fire, side-by-side operational test and evaluation of the air-to-air Starstreak and air-to-air Stinger missiles fired from the AH-64D Apache helicopter: *Provided further*, That none of the funds specified in the preceding proviso may be obligated until the Secretary of the Army certifies the following, in writing, to the congressional defense committees:

(1) Engagement tests can be safely conducted with both Starstreak and Stinger missiles from the AH-64D helicopter at air speeds consistent with the normal operating limits of that aircraft;

(2) The Starstreak missiles utilized in the test will be provided at no cost to the United States Government;

(3) None of the \$10,000,000 provided will be used to develop modifications to the Starstreak or the Stinger missiles; and

(4) Both the Starstreak and Stinger missiles can be fired from the AH-64D aircraft consistent with the survivability of the aircraft and missile performance standards contained in the Army's Air-to-Air Missile Capability Need Statement approved by the Department of the Army in January 1997.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment; \$8,297,986,000, to remain available for obligation until September 30, 2000: *Provided*, That funds appropriated in this paragraph which are available for the V-22 may be used to meet unique requirements of the Special Operation Forces: *Provided further*, That notwithstanding 10 U.S.C. 2366, none of the funds made available under this heading may be used to conduct system-level live-fire shock tests on the SSN-21 class of submarines unless the Commander-in-Chief of the United States Atlantic Command certifies in writing to the congressional defense committees that such testing must be conducted to meet operational requirements for those submarines: *Provided further*, That not

more than \$50,000,000 of the funds made available under this heading for feasibility studies and component research and development for future aircraft carriers may be obligated until the Secretary of the Navy certifies in writing to the congressional defense committees that the Navy has a program in place to develop and install an infrared search and track device on CVN-77 upon its acceptance by the government: *Provided further*, That the restriction in the preceding proviso does not apply to funds requested in the fiscal year 1999 President's budget and provided in this Act for design of CVN-77: *Provided further*, That of the funds appropriated in title IV of Public Law 105-56 (Department of Defense Appropriations Act, 1998), \$213,229,000 is only for research, development, test and evaluation of cooperative engagement capability.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment; \$13,577,441,000, to remain available for obligation until September 30, 2000.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment; \$8,776,318,000, to remain available for obligation until September 30, 2000: *Provided*, That not less than \$340,446,000 of the funds made available under this heading shall be made available only for the Sea-Based Wide Area Defense (Navy Upper-Tier) program: *Provided further*, That funding for the Sea-Based Wide Area Defense (Navy Upper-Tier) program in this or any other Act shall be used for research, development and deployment including, but not limited to, continuing ongoing risk reduction activities, initiating system engineering for an initial Block I capability, and deployment at the earliest feasible time following Aegis Lightweight Exoatmospheric Projectile (LEAP) intercept flight tests.

DEVELOPMENTAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, of independent activities of the Director, Test and Evaluation in the direction and supervision of developmental test and evaluation, including performance and joint developmental testing and evaluation; and administrative expenses in connection therewith; \$263,606,000, to remain available for obligation until September 30, 2000: *Provided*, That of the funds appropriated in this paragraph, \$12,500,000 shall not be obligated or expended until authorized by law.

OPERATIONAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith; \$35,245,000, to remain available for obligation until September 30, 2000: *Provided*, That of the funds appropriated in this paragraph, \$6,000,000 shall not be obligated or expended until authorized by law.

TITLE V

REVOLVING AND MANAGEMENT FUNDS
DEFENSE WORKING CAPITAL FUNDS
(INCLUDING TRANSFER OF FUNDS)

For the Defense Working Capital Funds; \$94,500,000: *Provided*, That during the fiscal year 1999, in order to maintain adequate cash balances in the Defense Working Capital Funds, the Secretary of Defense may transfer up to \$350,000,000 from the National Defense Stockpile Transaction Fund to the Defense Working Capital Funds: *Provided further*, That the total of amounts so transferred during the fiscal year shall be transferred back to the National Defense Stockpile Transaction Fund not later than September 30, 1999.

NATIONAL DEFENSE SEALIFT FUND
(INCLUDING TRANSFER OF FUNDS)

For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744); \$673,366,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: *Provided further*, That notwithstanding any other provision of law, of the funds available under this heading, \$28,800,000 shall be transferred to "Alteration of Bridges": *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That of the funds appropriated in this paragraph, \$3,800,000 shall not be obligated or expended until authorized by law.

TITLE VI

OTHER DEPARTMENT OF DEFENSE PROGRAMS
DEFENSE HEALTH PROGRAM

For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law; \$10,127,622,000, of which \$9,725,235,000 shall be for Operation and maintenance, of which not to exceed two per centum shall remain available until September 30, 2000, and of which \$402,387,000, to remain available for obligation until September 30, 2001, shall be for Procurement: *Provided*, That of the funds appropriated in this paragraph, \$62,200,000 shall not be obligated or expended until authorized by law.

CHEMICAL AGENTS AND MUNITIONS
DESTRUCTION, ARMY

For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C.

1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile; \$796,100,000, of which \$508,650,000 shall be for Operation and maintenance, \$124,670,000 shall be for Procurement to remain available until September 30, 2001, and \$162,780,000 shall be for Research, development, test and evaluation to remain available until September 30, 2000.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

(INCLUDING TRANSFER OF FUNDS)

For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for Operation and maintenance; for Procurement; and for Research, development, test and evaluation; \$764,595,000: *Provided*, That the funds appropriated under this head shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: *Provided further*, That the transfer authority provided in this paragraph is in addition to any transfer authority contained elsewhere in this Act: *Provided further*, That of the funds appropriated in this paragraph, \$37,013,000 shall not be obligated or expended until authorized by law.

OFFICE OF THE INSPECTOR GENERAL

For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended; \$132,064,000, of which \$130,764,000 shall be for Operation and maintenance, of which not to exceed \$600,000 is available for emergencies and extraordinary expenses to be expended on the approval or authority of the Inspector General, and payments may be made on his certificate of necessity for confidential military purposes; and of which \$1,300,000, to remain available until September 30, 2001, shall be for Procurement.

TITLE VII

RELATED AGENCIES

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System; \$201,500,000.

INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Intelligence Community Management Account; \$136,123,000, of which \$30,290,000 for the Advanced Research and Development Committee shall remain available until September 30, 2000: *Provided*, That of the funds appropriated under this heading, \$27,000,000 shall be transferred to the Department of Justice for the National Drug Intelligence Center to support the Department of Defense's counter-drug intelligence responsibilities, and of the said amount, \$1,500,000 for Procurement shall remain available until September 30, 2001, and \$3,000,000 for Research, development, test and evaluation shall remain available until September 30, 2000.

PAYMENT TO KAHŌ'OLAWĒ ISLAND CONVEYANCE, REMEDIATION, AND ENVIRONMENTAL RESTORATION FUND

For payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund, as authorized by law; \$15,000,000, to remain available until expended.

NATIONAL SECURITY EDUCATION TRUST FUND

For the purposes of title VIII of Public Law 102-183, \$3,000,000, to be derived from the National Security Education Trust Fund, to remain available until expended.

TITLE VIII

GENERAL PROVISIONS

SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

SEC. 8004. No more than 20 per centum of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last two months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.

(TRANSFER OF FUNDS)

SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed \$2,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress.

(TRANSFER OF FUNDS)

SEC. 8006. During the current fiscal year, cash balances in working capital funds of the

Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds: *Provided further*, That transfers may be made between working capital funds and the "Foreign Currency Fluctuations, Defense" appropriation and the "Operation and Maintenance" appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.

SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

AV-8B aircraft;
E-2C aircraft;
T-45 aircraft; and
Medium Tactical Vehicle Replacement (MTVR) vehicle.

SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to Congress on September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and

freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99-239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

SEC. 8010. (a) During fiscal year 1999, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

(b) The fiscal year 2000 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2000 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2000.

(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

SEC. 8011. Notwithstanding any other provision of law, none of the funds made available by this Act shall be used by the Department of Defense to exceed, outside the 50 United States, its territories, and the District of Columbia, 125,000 civilian workyears: *Provided*, That workyears shall be applied as defined in the Federal Personnel Manual: *Provided further*, That workyears expended in dependent student hiring programs for disadvantaged youths shall not be included in this workyear limitation.

SEC. 8012. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

SEC. 8013. (a) None of the funds appropriated by this Act shall be used to make contributions to the Department of Defense Education Benefits Fund pursuant to section 2006(g) of title 10, United States Code, representing the normal cost for future benefits under section 3015(c) of title 38, United States Code, for any member of the armed services who, on or after the date of enactment of this Act—

(1) enlists in the armed services for a period of active duty of less than three years; or

(2) receives an enlistment bonus under section 308a or 308f of title 37, United States Code,

nor shall any amounts representing the normal cost of such future benefits be transferred from the Fund by the Secretary of the Treasury to the Secretary of Veterans Affairs pursuant to section 2006(d) of title 10, United States Code; nor shall the Secretary of Veterans Affairs pay such benefits to any such member: *Provided*, That in the case of a member covered by clause (1), these limitations shall not apply to members in combat arms skills or to members who enlist in the armed services on or after July 1, 1989, under a program continued or established by the Secretary of Defense in fiscal year 1991 to test the cost-effective use of special recruiting incentives involving not more than nineteen noncombat arms skills approved in advance by the Secretary of Defense: *Provided*

further, That this subsection applies only to active components of the Army.

(b) None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: *Provided*, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: *Provided further*, That this subsection applies only to active components of the Army.

SEC. 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of enactment of this Act, is performed by more than ten Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That this section shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 per centum Native American ownership.

(TRANSFER OF FUNDS)

SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2301 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): *Provided further*, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: *Provided further*, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

SEC. 8018. Funds available in this Act may be used to provide transportation for the next-of-kin of individuals who have been prisoners of war or missing in action from the Vietnam era to an annual meeting in the United States, under such regulations as the Secretary of Defense may prescribe.

SEC. 8019. Notwithstanding any other provision of law, during the current fiscal year, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for fiscal year 2000 shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.

SEC. 8020. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M-1 Carbines, M-1 Garand rifles, M-14 rifles, .22 caliber rifles, .30 caliber rifles, or M-1911 pistols.

SEC. 8021. Notwithstanding any other provision of law, none of the funds appropriated by this Act shall be available to pay more than 50 per centum of an amount paid to any person under section 308 of title 37, United States Code, in a lump sum.

SEC. 8022. No more than \$500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Cap-

ital Region: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

SEC. 8023. A member of a reserve component whose unit or whose residence is located in a State which is not contiguous with another State is authorized to travel in a space required status on aircraft of the Armed Forces between home and place of inactive duty training, or place of duty in lieu of unit training assembly, when there is no road or railroad transportation (or combination of road and railroad transportation between those locations): *Provided*, That a member traveling in that status on a military aircraft pursuant to the authority provided in this section is not authorized to receive travel, transportation, or per diem allowances in connection with that travel.

SEC. 8024. The unobligated balance of the amounts appropriated by section 8024 of the Department of Defense Appropriations Act, 1998 (Public Law 105-56), shall remain available until September 30, 1999 for incentive payments authorized by section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544): *Provided*, That contractors participating in the test program established by section 834 of Public Law 101-189 (15 U.S.C. 637 note) shall be eligible for the program established by section 504 of the Indian Financing Act.

SEC. 8025. During the current fiscal year, funds appropriated or otherwise available for any Federal agency, the Congress, the judicial branch, or the District of Columbia may be used for the pay, allowances, and benefits of an employee as defined by section 2105 of title 5, United States Code, or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

(1) is a member of a Reserve component of the Armed Forces, as described in section 10101 of title 10, United States Code, or the National Guard, as described in section 101 of title 32;

(2) performs, for the purpose of providing military aid to enforce the law or providing assistance to civil authorities in the protection or saving of life or property or prevention of injury—

(A) Federal service under sections 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable; or

(B) full-time military service for his or her State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; and

(3) requests and is granted—

(A) leave under the authority of this section; or

(B) annual leave, which may be granted without regard to the provisions of sections 5519 and 6323(b) of title 5, if such employee is otherwise entitled to such annual leave: *Provided*, That any employee who requests leave under subsection (3)(A) for service described in subsection (2) of this section is entitled to such leave, subject to the provisions of this section and of the last sentence of section 6323(b) of title 5, and such leave shall be considered leave under section 6323(b) of title 5.

SEC. 8026. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.

SEC. 8027. Funds appropriated by this Act for the American Forces Information Service shall not be used for any national or international political or psychological activities.

SEC. 8028. Notwithstanding any other provision of law or regulation, the Secretary of

Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code.

SEC. 8029. None of the funds appropriated or made available in this Act shall be used to reduce or disestablish the operation of the 53rd Weather Reconnaissance Squadron of the Air Force Reserve, if such action would reduce the WC-130 Weather Reconnaissance mission below the levels funded in this Act.

SEC. 8030. (a) Of the funds for the procurement of supplies or services appropriated by this Act, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

(b) During the current fiscal year, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

(c) For the purpose of this section, the phrase "qualified nonprofit agency for the blind or other severely handicapped" means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48).

SEC. 8031. During the current fiscal year, net receipts pursuant to collections from third party payers pursuant to section 1095 of title 10, United States Code, shall be made available to the local facility of the uniformed services responsible for the collections and shall be over and above the facility's direct budget amount.

SEC. 8032. During the current fiscal year, the Department of Defense is authorized to incur obligations of not to exceed \$350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: *Provided*, That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

SEC. 8033. Of the funds made available in this Act, not less than \$28,300,000 shall be available for the Civil Air Patrol Corporation, of which \$23,500,000 shall be available for Civil Air Patrol Corporation operation and maintenance to support readiness activities which includes \$3,800,000 for the Civil Air Patrol counterdrug program: *Provided*, That funds identified for "Civil Air Patrol" under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for the Air Force or any unit thereof.

SEC. 8034. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

(b) Limitation on Compensation—Federally Funded Research and Development Center (FFRDC).—No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC,

may be compensated for his or her services as a member of such entity, or as a paid consultant, except under the same conditions, and to the same extent, as members of the Defense Science Board: *Provided*, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 1999 may be used by a defense FFRDC, through a fee or other payment mechanism, for charitable contributions, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, or for absorption of contract overruns.

(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 1999, not more than 6,206 staff years of technical effort (staff years) may be funded for defense FFRDCs: *Provided*, That of the specific amount referred to previously in this subsection, not more than 1,105 staff years may be funded for the defense studies and analysis FFRDCs.

(e) Notwithstanding any other provision of law, the Secretary of Defense shall control the total number of staff years to be performed by defense FFRDCs during fiscal year 1999 so as to reduce the total amounts appropriated in titles II, III, and IV of this Act by \$62,000,000: *Provided*, That the total amounts appropriated in titles II, III, and IV of this Act are hereby reduced by \$62,000,000 to reflect savings from the use of defense FFRDCs by the department.

(f) Within 60 days after enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report presenting the specific amounts of staff years of technical effort to be allocated by the department for each defense FFRDC during fiscal year 1999: *Provided*, That after the submission of the report required by this subsection, the department may not reallocate more than five per centum of an FFRDC's staff years among other defense FFRDCs until 30 days after a detailed justification for any such reallocation is submitted to the congressional defense committees.

(g) The Secretary of Defense shall, with the submission of the department's fiscal year 2000 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

(h) No part of the reductions contained in subsection (e) of this section may be applied against any budget activity, activity group, subactivity group, line item, program element, program, project, subproject or activity which does not fund defense FFRDC activities within each appropriation account, and the reductions in subsection (e) shall be allocated on a proportional basis.

(i) Not later than 90 days after enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report listing the specific funding reductions allocated to each category listed in subsection (h) above pursuant to this section.

SEC. 8035. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and

Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That these restrictions shall not apply to contracts which are in being as of the date of enactment of this Act.

SEC. 8036. For the purposes of this Act, the term "congressional defense committees" means the National Security Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives.

SEC. 8037. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or defense agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Circular A-76 shall not apply to competitions conducted under this section.

SEC. 8038. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) The Secretary of Defense shall submit to Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 1999. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

SEC. 8039. Appropriations contained in this Act that remain available at the end of the current fiscal year as a result of energy cost savings realized by the Department of Defense shall remain available for obligation for the next fiscal year to the extent, and for

the purposes, provided in section 2865 of title 10, United States Code.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8040. Amounts deposited during the current fiscal year to the special account established under 40 U.S.C. 485(h)(2) and to the special account established under 10 U.S.C. 2667(d)(1) are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 485(h)(2)(A) and (B) and 10 U.S.C. 2667(d)(1)(B), to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.

SEC. 8041. During the current fiscal year, appropriations available to the Department of Defense may be used to reimburse a member of a reserve component of the Armed Forces who is not otherwise entitled to travel and transportation allowances and who occupies transient government housing while performing active duty for training or inactive duty training: *Provided*, That such members may be provided lodging in kind if transient government quarters are unavailable as if the member was entitled to such allowances under subsection (a) of section 404 of title 37, United States Code: *Provided further*, That if lodging in kind is provided, any authorized service charge or cost of such lodging may be paid directly from funds appropriated for operation and maintenance of the reserve component of the member concerned.

SEC. 8042. The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the Defense Agencies.

SEC. 8043. Notwithstanding any other provision of law, funds available for "Drug Interdiction and Counter-Drug Activities, Defense" may be obligated for the Young Marines program.

SEC. 8044. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101-510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

SEC. 8045. Of the funds appropriated or otherwise made available by this Act, not more than \$119,200,000 shall be available for payment of the operating costs of NATO Headquarters: *Provided*, That the Secretary of Defense may waive this section for Department of Defense support provided to NATO forces in and around the former Yugoslavia.

SEC. 8046. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than \$100,000.

SEC. 8047. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an

investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

(b) The fiscal year 2000 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2000 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2000 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

SEC. 8048. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2000: *Provided*, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended.

SEC. 8049. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

SEC. 8050. Amounts collected for the use of the facilities of the National Science Center for Communications and Electronics during the current fiscal year pursuant to section 1459(g) of the Department of Defense Authorization Act, 1986, and deposited to the special account established under subsection 1459(g)(2) of that Act are appropriated and shall be available until expended for the operation and maintenance of the Center as provided for in subsection 1459(g)(2).

SEC. 8051. None of the funds appropriated in this Act may be used to fill the commander's position at any military medical facility with a health care professional unless the prospective candidate can demonstrate professional administrative skills.

SEC. 8052. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.

SEC. 8053. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work; or

(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: *Provided*, That this limitation shall not apply to contracts in an amount of less than \$25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

SEC. 8054. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used—

(1) to establish a field operating agency; or

(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

(c) This section does not apply to field operating agencies funded within the National Foreign Intelligence Program.

SEC. 8055. Notwithstanding section 303 of Public Law 96-487 or any other provision of law, the Secretary of the Navy is authorized to lease real and personal property at Naval Air Facility, Adak, Alaska, pursuant to 10 U.S.C. 2667(f), for commercial, industrial or other purposes.

(RESCISSIONS)

SEC. 8056. Of the funds provided in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts in the specified amounts:

"Missile Procurement, Army, 1998/2000", \$13,300,000;

"Procurement of Weapons and Tracked Combat Vehicles, Army, 1998/2000", \$6,700,000;

"Other Procurement, Army, 1998/2000", \$24,000,000;

"Weapons Procurement, Navy, 1998/2000", \$2,000,000;

"Procurement of Ammunition, Navy and Marine Corps, 1998/2000", \$12,000,000;

"Other Procurement, Navy, 1998/2000", \$28,500,000;

"Aircraft Procurement, Air Force, 1998/2000", \$15,000,000;

"Missile Procurement, Air Force, 1998/2000", \$19,840,000;

"Other Procurement, Air Force, 1998/2000", \$4,160,000;

"Research, Development, Test and Evaluation, Army, 1998/1999", \$18,000,000;

"Research, Development, Test and Evaluation, Navy, 1998/1999", \$17,500,000;

"Research, Development, Test and Evaluation, Air Force, 1998/1999", \$34,370,000; and

"Research, Development, Test and Evaluation, Defense-Wide, 1998/1999", \$73,000,000.

SEC. 8057. None of the funds available in this Act may be used to reduce the authorized positions for military (civilian) technicians of the Army National Guard, the Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military (civilian) technicians, unless such reductions are a direct result of a reduction in military force structure.

SEC. 8058. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of North Korea unless specifically appropriated for that purpose.

SEC. 8059. During the current fiscal year, funds appropriated in this Act are available to compensate members of the National Guard for duty performed pursuant to a plan submitted by a Governor of a State and approved by the Secretary of Defense under section 112 of title 32, United States Code: *Provided*, That during the performance of such duty, the members of the National Guard shall be under State command and control: *Provided further*, That such duty shall be treated as full-time National Guard duty for purposes of sections 12602(a)(2) and (b)(2) of title 10, United States Code.

SEC. 8060. Funds appropriated in this Act for operation and maintenance of the Military Departments, Unified and Specified Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Unified Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) aggregate: *Provided*, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

SEC. 8061. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 1998 level: *Provided*, That the Service Surgeons General may waive this section by certifying to the congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8062. None of the funds appropriated in this Act may be transferred to or obligated from the Pentagon Reservation Maintenance Revolving Fund, unless the Secretary of Defense certifies that the total cost for the planning, design, construction and installation of equipment for the renovation of the Pentagon Reservation will not exceed \$1,118,000,000.

SEC. 8063. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(b) None of the funds available to the Central Intelligence Agency for any fiscal year

for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(TRANSFER OF FUNDS)

SEC. 8064. Appropriations available in this Act under the heading "Operation and Maintenance, Defense-Wide" for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.

SEC. 8065. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.

SEC. 8066. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa: *Provided*, That notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.

SEC. 8067. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

SEC. 8068. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act.

SEC. 8069. Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.

SEC. 8070. During the current fiscal year, the Army shall use the former George Air Force Base as the airhead for the National Training Center at Fort Irwin: *Provided*, That none of the funds in this Act shall be

obligated or expended to transport Army personnel into Edwards Air Force Base for training rotations at the National Training Center.

SEC. 8071. (a) The Secretary of Defense shall submit, on a quarterly basis, a report to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate setting forth all costs (including incremental costs) incurred by the Department of Defense during the preceding quarter in implementing or supporting resolutions of the United Nations Security Council, including any such resolution calling for international sanctions, international peacekeeping operations, and humanitarian missions undertaken by the Department of Defense. The quarterly report shall include an aggregate of all such Department of Defense costs by operation or mission.

(b) The Secretary of Defense shall detail in the quarterly reports all efforts made to seek credit against past United Nations expenditures and all efforts made to seek compensation from the United Nations for costs incurred by the Department of Defense in implementing and supporting United Nations activities.

SEC. 8072. (a) LIMITATION ON TRANSFER OF DEFENSE ARTICLES AND SERVICES.—Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

(b) COVERED ACTIVITIES.—This section applies to—

(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII of the United Nations Charter under the authority of a United Nations Security Council resolution; and

(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

(c) REQUIRED NOTICE.—A notice under subsection (a) shall include the following:

(1) A description of the equipment, supplies, or services to be transferred.

(2) A statement of the value of the equipment, supplies, or services to be transferred.

(3) In the case of a proposed transfer of equipment or supplies—

(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

SEC. 8073. None of the funds available to the Department of Defense shall be obligated or expended to make a financial contribution to the United Nations for the cost of an United Nations peacekeeping activity (whether pursuant to assessment or a voluntary contribution) or for payment of any United States arrearage to the United Nations.

SEC. 8074. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

(2) such bonus is part of restructuring costs associated with a business combination.

SEC. 8075. (a) None of the funds appropriated or otherwise made available in this Act may be used to transport or provide for the transportation of chemical munitions or agents to the Johnston Atoll for the purpose of storing or demilitarizing such munitions or agents.

(b) The prohibition in subsection (a) shall not apply to any obsolete World War II chemical munition or agent of the United States found in the World War II Pacific Theater of Operations.

(c) The President may suspend the application of subsection (a) during a period of war in which the United States is a party.

SEC. 8076. None of the funds provided in title II of this Act for "Former Soviet Union Threat Reduction" may be obligated or expended to finance housing for any individual who was a member of the military forces of the Soviet Union or for any individual who is or was a member of the military forces of the Russian Federation.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8077. During the current fiscal year, no more than \$7,000,000 of appropriations made in this Act under the heading "Operation and Maintenance, Defense-Wide" may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

SEC. 8078. For purposes of section 1553(b) of title 31, United States Code, any subdivision of appropriations made in this Act under the heading "Shipbuilding and Conversion, Navy" shall be considered to be for the same purpose as any subdivision under the heading "Shipbuilding and Conversion, Navy" appropriations in any prior year, and the 1 percent limitation shall apply to the total amount of the appropriation.

SEC. 8079. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended (31 U.S.C. 1551 note): *Provided*, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: *Provided further*, That the total amount charged to a current appropriation under this section

may not exceed an amount equal to 1 percent of the total appropriation for that account.

SEC. 8080. The Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees by February 1, 1999 a detailed report identifying, by amount and by separate budget activity, activity group, subactivity group, line item, program element, program, project, subproject, and activity, any activity for which the fiscal year 2000 budget request was reduced because Congress appropriated funds above the President's budget request for that specific activity for fiscal year 1999.

SEC. 8081. Funds appropriated in title II of this Act for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects may be obligated at the time the reimbursable order is accepted by the performing activity: *Provided*, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.

SEC. 8082. The Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: *Provided*, That costs for which reimbursement is waived pursuant to this subsection shall be paid from appropriations available for the Asia-Pacific Center.

SEC. 8083. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

SEC. 8084. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: *Provided*, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: *Provided further*, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

SEC. 8085. During the current fiscal year, the amounts which are necessary for the operation and maintenance of the Fisher Houses administered by the Departments of the Army, the Navy, and the Air Force are hereby appropriated, to be derived from amounts which are available in the applicable Fisher House trust fund established under 10 U.S.C. 2221 for the Fisher Houses of each such department.

SEC. 8086. During the current fiscal year and hereafter, refunds attributable to the use of the Government travel card by military personnel and civilian employees of the Department of Defense and refunds attrib-

utable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance accounts of the Department of Defense which are current when the refunds are received.

SEC. 8087. During the current fiscal year, not more than a total of \$60,000,000 in withdrawal credits may be made by the Marine Corps Supply Management activity group of the Navy Working Capital Fund, Department of Defense Working Capital Funds, to the credit of current applicable appropriations of a Department of Defense activity in connection with the acquisition of critical low density repairables that are capitalized into the Navy Working Capital Fund.

SEC. 8088. Notwithstanding 31 U.S.C. 3902, during the current fiscal year interest penalties may be paid by the Department of Defense from funds financing the operation of the military department or defense agency with which the invoice or contract payment is associated.

SEC. 8089. At the time the President submits his budget for fiscal year 2000 and any fiscal year thereafter, the Department of Defense shall transmit to the congressional defense committees a budget justification document for the active and reserve Military Personnel accounts, to be known as the "M-1", which shall identify, at the budget activity, activity group, and subactivity group level, the amounts requested by the President to be appropriated to the Department of Defense for military personnel in any budget request, or amended budget request, for that fiscal year.

SEC. 8090. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: *Provided*, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: *Provided further*, That this restriction does not apply to programs funded within the National Foreign Intelligence Program: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8091. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with a contractor that is subject to the reporting requirement set forth in subsection (d) of section 4212 of title 38, United States Code, but has not submitted the most recent report required by such subsection for 1998 or a subsequent year.

SEC. 8092. None of the funds made available in this Act may be used to approve or license the sale of the F-22 advanced tactical fighter to any foreign government.

SEC. 8093. None of the funds appropriated or otherwise made available by this Act may be made available for the United States Man and the Biosphere Program, or related projects.

SEC. 8094. Notwithstanding 31 U.S.C. 1552(a), of the funds provided in Department of Defense Appropriations Acts, not more than the specified amounts from the following accounts shall remain available for the payment of satellite on-orbit incentive fees until the fees are paid:

"Missile Procurement, Air Force, 1995/1997", \$20,978,000;

"Missile Procurement, Air Force, 1996/1998", \$16,782,400.

SEC. 8095. None of the funds in this or any other Act may be used by the National Imagery and Mapping Agency for any mapping,

charting, and geodesy activities unless contracts for such services are awarded in accordance with the qualifications based selection process in 40 U.S.C. 541 et seq. and 10 U.S.C. 2855: *Provided*, That an exception shall be provided for such services that are critical to national security after a written notification has been submitted by the Deputy Secretary of Defense to the Committees on Appropriations of the House of Representatives and the Senate.

SEC. 8096. Funds made available to the Civil Air Patrol in this Act under the heading "Drug Interdiction and Counter-Drug Activities, Defense" may be used for the Civil Air Patrol Corporation's counterdrug program, including its demand reduction program involving youth programs, as well as operational and training drug reconnaissance missions for federal, state and local government agencies; for administrative costs, including the hiring of Civil Air Patrol Corporation employees; for travel and per diem expenses of Civil Air Patrol Corporation personnel in support of those missions; and for equipment needed for mission support or performance: *Provided*, That of these funds, \$300,000 shall be made available to establish and operate a distance learning program: *Provided further*, That the Department of the Air Force should waive reimbursement from the Federal, State and local government agencies for the use of these funds.

SEC. 8097. The Secretary of Defense shall undertake a review of all distributed learning education and training programs in the Department of Defense and shall issue a plan to implement a department-wide, standardized, cost-effective Advanced Distributed Learning framework to achieve the goals of commonality, interoperability, and reuse: *Provided*, That the Secretary shall report to Congress on the results of this review and present a detailed implementation and budget plan no later than July 30, 1999.

SEC. 8098. None of the funds in this Act may be available for the purchase by the Department of Defense of cross deck pendants for arresting aircraft on U.S. Navy aircraft carriers unless such cross deck pendants are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that such an acquisition must be made in order to acquire capability for national security purposes.

SEC. 8099. None of the funds in this or any other Act shall be available to any Reserve Component to establish new activities to perform depot level maintenance and re-manufacture of any equipment in the Department of Defense inventory unless the Secretary of Defense first certifies to the Committees on Appropriations of the House of Representatives and the Senate, on a case-by-case basis, that (a) insufficient workload capacity is available at existing government or private sector depot maintenance facilities currently used by the Reserve Components for similar work; and (b) an in-depth analysis has been performed comparing the cost of any proposed expansion of depot facilities versus the cost of performing the same work at existing depot facilities or by the private sector.

SEC. 8100. Notwithstanding any other provision of law, the TRICARE managed care support contracts in effect, or in final stages of acquisition as of September 30, 1998, may be extended for two years: *Provided*, That

any such extension may only take place if the Secretary of Defense determines that it is in the best interest of the government: *Provided further*, That any contract extension shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the government: *Provided further*, That notwithstanding any other provision of law, all future TRICARE managed care support contracts replacing contracts in effect, or in the final stages of acquisition as of September 30, 1998, may include a base contract period for transition and up to seven one-year option periods.

SEC. 8101. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by \$204,100,000 to reflect savings from revised economic assumptions, to be distributed as follows:

"Aircraft Procurement, Army", \$4,000,000;
 "Missile Procurement, Army", \$4,000,000;
 "Procurement of Weapons and Tracked Combat Vehicles, Army", \$4,000,000;
 "Procurement of Ammunition, Army", \$3,000,000;
 "Other Procurement, Army", \$9,000,000;
 "Aircraft Procurement, Navy", \$22,000,000;
 "Weapons Procurement, Navy", \$4,000,000;
 "Procurement of Ammunition, Navy and Marine Corps", \$1,000,000;
 "Shipbuilding and Conversion, Navy", \$18,000,000;
 "Other Procurement, Navy", \$12,000,000;
 "Procurement, Marine Corps", \$2,000,000;
 "Aircraft Procurement, Air Force", \$23,000,000;
 "Missile Procurement, Air Force", \$5,200,000;
 "Procurement of Ammunition, Air Force", \$1,000,000;
 "Other Procurement, Air Force", \$4,900,000;
 "Procurement, Defense-Wide", \$5,100,000;
 "Chemical Agents and Munitions Destruction, Army", \$3,000,000;
 "Research, Development, Test and Evaluation, Army", \$10,000,000;
 "Research, Development, Test and Evaluation, Navy", \$18,500,000;
 "Research, Development, Test and Evaluation, Air Force", \$26,300,000; and
 "Research, Development, Test and Evaluation, Defense-Wide", \$24,100,000;

Provided, That these reductions shall be applied proportionally to each budget activity, activity group and sub-activity group and each program, project, and activity within each appropriation account.

SEC. 8102. (a) TRANSFERS OF VESSELS BY GRANT.—The Secretary of the Navy is authorized to transfer vessels to foreign countries on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) as follows:

(1) To the Government of Argentina, the NEWPORT class tank landing ship NEWPORT (LST 1179).

(2) To the Government of Greece—

(A) the KNOX class frigate HEPBURN (FF 1055); and

(B) the ADAMS class guided missile destroyers STRAUSS (DDG 16), SEMMS (DDG 18), and WADDELL (DDG 24).

(3) To the Government of Portugal, the STALWART class ocean surveillance ship ASSURANCE (T-AGOS 5).

(4) To the Government of Turkey, the KNOX class frigates PAUL (FF 1080), MILLER (FF 1091), and W.S. SIMMS (FF 1059).

(b) TRANSFERS OF VESSELS BY SALE.—The Secretary of the Navy is authorized to transfer vessels to foreign countries on a sales basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761) as follows:

(1) To the Government of Brazil, the NEWPORT class tank landing ships CAYUGA (LST 1186) and PEORIA (LST 1183).

(2) To the Government of Chile—

(A) the NEWPORT class tank landing ship SAN BERNARDINO (LST 1189); and

(B) the auxiliary repair dry dock WATERFORD (ARD 5).

(3) To the Government of Greece—

(A) the OAK RIDGE class medium dry dock ALAMAGORDO (ARMD 2); and

(B) the KNOX class frigates VREELAND (FF 1068) and TRIPPE (FF 1075).

(4) To the Government of Mexico—

(A) the auxiliary repair dock SAN ONOFRE (ARD 30); and

(B) the KNOX class frigate PHARRIS (FF 1094).

(5) To the Government of the Philippines, the STALWART class ocean surveillance ship TRIUMPH (T-AGOS 4).

(6) To the Government of Spain, the NEWPORT class tank landing ships HARLAN COUNTY (LST 1196) and BARNSTABLE COUNTY (LST 1197).

(7) To the Taipei Economic and Cultural Representative Office in the United States (the Taiwan instrumentality that is designated pursuant to section 10(a) of the Taiwan Relations Act)—

(A) the KNOX class frigates PEARY (FF 1073), JOSEPH HEWES (FF 1078), COOK (FF 1083), BREWTON (FF 1086), KIRK (FF 1087), and BARBEY (FF 1088);

(B) the NEWPORT class tank landing ships MANITOWOC (LST 1180) and SUMTER (LST 1181);

(C) the floating dry dock COMPETENT (AFDM 6); and

(D) the ANCHORAGE class dock landing ship PENSACOLA (LSD 38).

(8) To the Government of Turkey—

(A) the OLIVER HAZARD PERRY class guided missile frigates MAHLON S. TISDALE (FFG 27), REID (FFG 30), and DUNCAN (FFG 10); and

(B) the KNOX class frigates REASONER (FF 1063), FANNING (FF 1076), BOWEN (FF 1079), MCCANDLESS (FF 1084), DONALD BEARY (FF 1085), AINSWORTH (FF 1090), THOMAS C. HART (FF 1092), and CAPODANNO (FF 1093).

(9) To the Government of Venezuela, the medium auxiliary floating dry dock bearing hull number AFDM 2.

(c) TRANSFERS OF VESSELS ON A COMBINED LEASE-SALE BASIS.—The Secretary of the Navy is authorized to transfer vessels to foreign countries on a combined lease-sale basis under sections 61 and 21 of the Arms Export Control Act (22 U.S.C. 2796, 2761) and in accordance with subsection (d) as follows:

(1) To the Government of Brazil, the CIMARRON class oiler MERRIMACK (AO 179).

(2) To the Government of Greece, the KIDD class guided missile destroyers KIDD (DDG 993), CALLAGHAN (DDG 994), SCOTT (DDG 995), and CHANDLER (DDG 996).

(d) CONDITIONS RELATING TO COMBINED LEASE-SALE TRANSFERS.—A transfer of a vessel on a combined lease-sale basis authorized by subsection (c) shall be made in accordance with the following provisions, which the Secretary shall include in the terms of any agreement with the recipient country for such transfer of the vessel:

(1) The Secretary may initially transfer the vessel by lease, with lease payments suspended for the term of the lease, while simultaneously entering into a foreign military sales agreement for the transfer of title to the vessel.

(2) The Secretary may not deliver title to the vessel until the purchase price of the vessel under such a sales agreement is paid in full.

(3) Upon payment of the purchase price in full under such a sales agreement and deliv-

ery of title to the recipient country, the Secretary shall terminate the lease.

(4) If the purchasing country fails to make full payment of the purchase price in accordance with the sales agreement—

(A) the sales agreement shall be immediately terminated;

(B) the suspension of lease payments under the lease shall be vacated; and

(C) the United States shall be entitled to retain funds received under the sales agreement in such amounts as necessary to cover the amount of lease payments due and payable under the lease and all other costs required by the lease to be paid as of the date of the sales agreement termination.

(5) If a sales agreement is terminated pursuant to paragraph (4), the United States shall not be required to pay any interest to the recipient country on any amount paid to the United States by the recipient country under the sales agreement and not retained by the United States under the lease.

(e) FUNDING FOR CERTAIN COSTS OF TRANSFERS.—There is established in the Treasury of the United States a special account to be known as the Defense Vessels Transfer Program Account. There is hereby appropriated into that account such sums as may be necessary for the costs (as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a)) of the lease-sale transfers authorized by subsection (d). Funds in that account are available only for the purpose of covering those costs.

(f) WAIVER OF REQUIREMENTS FOR NOTIFICATION TO CONGRESS.—Section 516(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(f)), section 525 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2412), and any similar, successor provision of law do not apply with respect to the transfers authorized by this section.

(g) INAPPLICABILITY OF AGGREGATE ANNUAL LIMITATION ON VALUE OF TRANSFERRED EXCESS DEFENSE ARTICLES.—In the case of the transfer of a vessel authorized by subsection (a) to be made by grant under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), the value of the vessel transferred shall not be included for purposes of subsection (g) of that section in the aggregate value of excess defense articles transferred to countries under that section in any fiscal year.

(h) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection with a transfer authorized by this section shall be charged to the recipient.

(i) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum extent practicable, the Secretary of the Navy shall require, as a condition of the transfer of a vessel under this section, that the country to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of that country, performed at a shipyard located in the United States, including a United States Navy shipyard.

(j) EXPIRATION OF AUTHORITY.—The authority to transfer vessels under this section shall expire at the end of the two-year period beginning on the date of the enactment of this Act.

SEC. 8103. None of the funds in this Act may be used to compensate an employee of the Department of Defense who initiates a new start program without notification to the Office of the Secretary of Defense and the congressional defense committees, as required by Department of Defense financial management regulations.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8104. Of the funds made available under title II of this Act, the following

amounts shall be transferred to the Defense Working Capital Funds for the purpose of funding operations of the Defense Commissary Agency:

"Operation and Maintenance, Army", \$338,400,000;

"Operation and Maintenance, Navy", \$255,000,000;

"Operation and Maintenance, Marine Corps", \$86,600,000; and

"Operation and Maintenance, Air Force", \$302,071,000:

Provided, That the transfer authority provided in this section is in addition to any other transfer authority contained elsewhere in this Act.

SEC. 8105. Of the amounts made available in title II of this Act under the heading "Operation and Maintenance, Navy", \$20,000,000 is available only for emergency and extraordinary expenses associated with the accident involving a United States Marine Corps A-6 aircraft on February 3, 1998, near Cavalese, Italy: *Provided*, That these funds shall remain available until expended: *Provided further*, That notwithstanding any other provision of law, the funds made available by this section shall be available only for payments to persons, communities, or other entities in Italy only for reimbursement for damages resulting from the expenses associated with the accident involving a United States Marine Corps A-6 aircraft on February 3, 1998, near Cavalese, Italy: *Provided further*, That notwithstanding any other provision of law, funds made available under this section may be used to rebuild or replace the funicular system in Cavalese destroyed on February 3, 1998 by that aircraft: *Provided further*, That any amount paid to any individual or entity from the amount appropriated under this section shall be credited against any amount subsequently determined to be payable to that individual or entity under chapter 163 of title 10, United States Code, section 127 of that title, or any other authority provided by law for administrative settlement of claims against the United States with respect to damages arising from the accident described in this section: *Provided further*, That payment of an amount under this section shall not be considered to constitute a statement of legal liability on the part of the United States or otherwise to prejudice any judicial proceeding or investigation arising from the accident described in this section.

Mr. YOUNG of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill through page 107, line 23, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SEC. 8106. No funds appropriated or otherwise made available by this Act may be used to initiate or conduct offensive military operations by United States Armed Forces except in accordance with the war powers clause of the Constitution (article 1, section 8), which vests in Congress the power to declare and authorize war and to take certain specified, related decisions.

The CHAIRMAN. Pursuant to House Resolution 484, consideration of this section under the 5-minute rule shall not exceed 1 hour.

Mr. SKAGGS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, section 8106 in the bill really depends upon section 8 of Article

I of the Constitution. I would just like to refer my colleagues to that text which reads as follows:

The Congress shall have Power . . . to declare War, grant letters of Marque and Reprisal, and make rules concerning Captures on Land and Water.

What this amendment does is merely to say that no funds appropriated in this bill may be used for military operations of the United States except in accordance with that provision of the Constitution. In other words, we are transforming, by including this language, the abstract constitutional concept of the Congress' war powers authority and turning it into a real and concrete requirement bearing on the way this Nation will decide on military engagements at least during fiscal 1999.

This amendment represents the very simple proposition that we follow the Constitution and impose the limitation that the Constitution states and show that we really mean it. The question, of course, is: If you are just restating a Constitution, why is this really necessary?

I made a few observations during the debate on the rule referring back to statements by this administration and by the Bush administration that take an extraordinarily expansive view of the inherent authority held by the President to essentially define the national interests of the United States and use military force to implement that presidential definition of the national interest, which I think should give us some real pause.

In the Constitution's provision which I quoted, I think we in Congress, the legislative branch, have been given unequivocally and exclusively the power to decide questions of war for this country, even limited war. The framers put that power in Congress because they saw it as really an essential part of our democracy, expressly rejecting the idea, given their recent experience with the King of England, that the President should have that kind of power.

The Constitution rightly, I think, expects us as the representatives of the people to decide on questions of war.

There is always a lot of confusion because of that arcane phrase in the Constitution about declaring war. Let me just say that usage and dictionaries at the time the Constitution was drafted made it pretty clear that "declare" in the understanding of the drafters also meant "commence."

That was clear, for instance, from Alexander Hamilton's commentary in Federalist No. 25, noting that nations at the time went to war without formal declaration. James Madison, the real father of the Constitution, and Elbridge Gerry, during the Constitutional Convention, succeeded in substituting the words "declare" for "make" to make it clear that the President would have "the power to repel sudden attacks."

Very early in our republic, Chief Justice Marshall, with an understanding of

the contemporaneous thought of the drafters in a Supreme Court decision, made the following statement, and I quote:

The whole powers of war being, by the Constitution of the United States, vested in Congress, et cetera.

So there really should be no confusion about where this power lies.

At the time of the founding, it is also useful to understand what the drafters were getting at by the phrase "letters of marque and reprisal." Essentially at that time, these were ways of settling disputes short of all-out war.

Then-Secretary of State Thomas Jefferson wrote, "The making of reprisal on a nation is a very serious thing that is considered an act of war." And he goes on, "The right of reprisal is expressly lodged with Congress by the Constitution and not with the executive."

I elaborate a little bit on that because the action the President contemplated last spring with regard to Iraq, the actions being considered now with regard to Kosovo and Yugoslavia would best be considered as limited war under the marque and reprisal clause.

The Constitution clearly gives the President a very powerful role as commander in chief and as the maker of U.S. foreign policy.

The CHAIRMAN. The time of the gentleman from Colorado (Mr. SKAGGS) has expired.

(By unanimous consent, Mr. SKAGGS was allowed to proceed for 5 additional minutes.)

Mr. SKAGGS. Mr. Chairman, but in recent years, we have allowed the President to usurp Congress' power in this area and far exceed, I believe, what the Constitution contemplated.

I just wanted to offer to my colleagues' attention what I hope will be a graphic representation to help understand what we are talking about. That is the gray area that exists concededly between the Constitution's grant to the President of foreign policy and Commander in Chief powers and what the Constitution grants to this Congress under the war-making clause.

At one end of the spectrum, we all recognize the President has the inherent power to act to repel an attack, acts of defense of the Nation. At the other end of the spectrum of possible military operations, it is also pretty clear that we are given the power to determine whether or not this country would invade another country, a pure offensive action.

No one really knows exactly where our power ends under the Constitution, and our exclusive power, I might add, nor where the President's exclusive powers as Commander in Chief end. There is a gray area. But whatever Congress' power extends, all this amendment does is to say, to that extent, funds in the bill cannot be spent without complying with the Constitution.

That is important, I think, because for among other reasons, the

antideficiency act gives real teeth, then, to this provision in restraining and informing the decisions that would be made by the executive, either to act on its own or more properly to come here and deal with Congress and in the way the Constitution intended.

I hear a lot of complaints around here about our not being consulted. Let me tell my colleagues, if they want to be consulted about these important decisions, make sure this stays in the bill, because this has gotten the administration's attention, as it should.

I mentioned during the debate on the rule the statement of administration policy which includes a veto threat on this provision. That would be, I think, comic if it were not so serious. The idea that the President would veto a bill because Congress asserts and reclaims its designated and exclusive constitutional responsibility under Article I, section 8, is a little dumbfounding. I cannot believe the President would really follow through on that, a veto because Congress says that it and the President should follow the Constitution. Give me a break.

I realize there is a practice that has been built up during the Cold War years in which we are very deferential to the President, but in reconsidering this, let me just call my colleagues' attention to one of the compelling statements that Madison made about this, and I quote:

In no part of the Constitution is more wisdom to be found than in the clause which confides the question of war or peace to the legislature and not to the executive department. The trust and the temptation would be too great for one man.

I think that serves to demonstrate, again, the need for this provision. It underscores the wisdom of the founders, as Madison said.

My colleagues, if we do not stand up for our responsibilities and progresses under the Constitution, nobody else is going to. I think the American people have a right to expect us to do our job. If we are, indeed, tired of being ignored in these very important decisions about sending our Armed Forces into harm's way, I hope we will not only retain this provision in this bill tonight, but that my friends, the chairman and ranking member of the subcommittee will do their utmost to see that it is also retained in conference.

Mr. CAMPBELL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I was very favorably impressed at the learning shared by our colleague, the gentleman from Colorado, emphasizing the importance of section 8106 in the defense appropriations bill. I wish to add my own strong endorsement of this language and emphasize an additional reason why we should insist upon it.

The record of the President taking the authority away from Congress is a disappointing one in this century. On one recent occasion, one of our colleagues, joined by others, brought a lawsuit. That was former Congressman

Dellums who brought a lawsuit against former President Bush regarding his use of force.

The Court dismissed the case saying that the Congress itself had not spoken and that it required, in order for the case to be ripe, that the Congress speak.

It is my interpretation of section 8106 that it provides the ripeness for just such a challenge, should the President exercise the authority that he claims, to go to war without having an express approval in advance from the Congress of the United States. That, to me, is a very important purpose achieved here.

Secondly, the language refers to the War Resolution Authority, the authority to declare war in the Constitution. It does not in so many terms refer to the Commander in Chief authority.

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The power in the President vested as Commander in Chief includes the power to repel attacks, to respond to sudden attacks, and it is often that provision which is relied upon by Presidents when they choose to go to war without getting the approval of Congress, if they care to justify it at all. When we let that power slip from our fingers, we inch by inch approach tyranny, to give that much power to the President which our Founders wished not to see vested in a single person.

So this provision, in section 8106, does not refer to the Commander in Chief. I interpret the draftsman's intention to be, and all of us who are discussing this tonight, that the President in exercising authority under this appropriation act is to exercise authority specifically as 8106 says, and, that is, in compliance with the provisions of the war declaration authority. It is constitutional for us to impose this condition. If the President does not like it he may veto it. Indeed that is apparently what my colleague from Colorado informs us he has threatened to do.

But I lay down this legislative marker. The President, if he chooses to use force, must find the justification under the declaration of war authority, or he is violating the terms of this appropriation act and violating the antideficiency act. I would also say he is violating the Constitution, but that is the second issue. The first, the most immediate one, this is legislation and he would be violating the legislation.

Lastly, I wish to speak on the Constitution. It is very important not to forget that the Founders wanted all wars to be decided by the people's representatives. The gentleman from South Carolina (Mr. SANFORD) said it so eloquently when we debated this question once before. He said, "The bodies come home to Charleston, they don't come home to Washington." That is why the Founders intended to have this authority in the People's House and in the other body. All wars.

Mr. Chairman, I would like to conclude my remarks by a quotation from

"War and Responsibility" by Professor John Hart Ely, professor of constitutional law at Yale, then at Harvard, then dean of the Stanford Law School, now with the University of Miami.

"The power to declare war was constitutionally vested in Congress. The debates, and early practice, establish that this meant that all wars, big or small, declared in so many words or not—most weren't, even then—had to be legislatively authorized."

And in a footnote, Professor Ely then gives us the citations to Supreme Court cases at the time of the Founders from Justice Bushrod Washington:

"The early cases insisted on congressional authorization without pausing to evaluate the size of the conflict," citing the 1800 opinion in *Bas v. Tingy*: "Every contention by force, between two nations, in external matters, under the authority of their respective governments, is not only war, but public war." And similarly the Supreme Court opinions in *Talbot v. Seeman*, 1801, and *Little v. Barreme* in 1804.

Mr. Chairman, I conclude by commending the gentleman from Colorado for his insistence throughout this appropriation process on the constitutional prerogatives of the House and the other body, not for the sake of any one of us but for the sake of the people whom we represent that war not be fought without the express up-front approval of the Congress.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SEC. 8100. (a) ENSURING YEAR 2000 COMPLIANCE OF INFORMATION TECHNOLOGY AND NATIONAL SECURITY SYSTEMS.—(1) None of the funds appropriated or otherwise made available by this Act may (except as provided in paragraph (2)) be obligated or expended on the development or modernization of any information technology or national security system of the Department of Defense in use by the Department of Defense (whether or not the system is a mission critical system) if that system does not meet certification level 1a, 1b, or 2 (as prescribed in the April 1997 publication of the Department of Defense entitled "Year 2000 Management Plan").

(2) The limitation in paragraph (1) does not apply to an obligation or expenditure—

(A) that is directly related to ensuring that a system achieves year 2000 compliance;

(B) for a system that is being developed and fielded to replace before January 1, 2000, a noncompliant system or a system to be terminated in accordance with the May 1998 Department of Defense quarterly report on the status of year 2000 compliance; or

(C) for a particular change that is specifically required by law or that is specifically directed by the Secretary of Defense.

(b) UNALLOCATED REDUCTIONS OF FUNDS NOT TO APPLY TO MISSION CRITICAL SYSTEMS.—Funds appropriated or otherwise made available by this Act for mission critical systems are not subject to any unallocated reduction of funds made by or otherwise applicable to funds provided in this Act.

(c) CURRENT SERVICES OPERATIONS NOT AFFECTED.—Subsection (a) does not prohibit the obligation or expenditure of funds for current services operations of information technology and national security systems.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) on a case-

by-case basis with respect to an information technology or national security system if the Secretary provides the congressional defense committees with written notice of the waiver, including the reasons for the waiver and a timeline for the testing and certification of the system as year 2000 compliant.

(e) REQUIRED REPORT.—(1) Not later than December 1, 1998, the Secretary of Defense shall submit to the congressional defense committees a report describing—

(A) an executable strategy to be used throughout the Department of Defense to test information technology and national security systems for year 2000 compliance (to include functional capability tests and military exercises);

(B) the plans of the Department of Defense for ensuring that adequate resources (such as testing facilities, tools, and personnel) are available to ensure that all mission critical systems achieve year 2000 compliance; and

(C) the criteria and process to be used to certify a system as year 2000 compliant.

(2) The report shall also include—

(A) an updated list of all mission critical systems; and

(B) guidelines for developing contingency plans for the functioning of each information technology or national security system in the event of a year 2000 problem in any such system.

(f) CAPABILITY CONTINGENCY PLANS.—Not later than December 30, 1998, the Secretary of Defense shall have in place contingency plans to ensure continuity of operations for every critical mission or function of the Department of Defense that is dependent on an information technology or national security system.

(g) INSPECTOR GENERAL EVALUATION.—The Inspector General of the Department of Defense shall selectively audit information technology and national security systems certified as year 2000 compliant to evaluate the ability of systems to successfully operate during the actual year 2000, including the ability of the systems to access and transmit information from point of origin to point of termination.

(h) DEFINITIONS.—For purposes of this section:

(1) The term "information technology" has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(2) The term "national security system" has the meaning given that term in section 5142 of such Act (40 U.S.C. 1452).

(3) The term "development or modernization" has the meaning given that term in paragraph E of section 180203 of the Department of Defense Financial Management Regulation (DOD 7000.14-R), but does not include any matter covered by subparagraph 3 of that paragraph.

(4) The term "current services" has the meaning given that term in paragraph C of section 180203 of the Department of Defense Financial Management Regulation (DOD 7000.14-R).

(5) The term "mission critical system" means an information technology or national security system that is designated as mission critical in the May 1998 Department of Defense quarterly report on the status of year 2000 compliance.

SEC. 8101. (a) PLAN FOR SIMULATION OF YEAR 2000 IN MILITARY EXERCISES.—Not later than December 15, 1998, the Secretary of Defense shall submit to Congress a plan for the execution of a simulated year 2000 as part of military exercises described in subsection (c) in order to evaluate, in an operational environment, the extent to which information technology and national security systems involved in those exercises will successfully operate during the actual year 2000, includ-

ing the ability of those systems to access and transmit information from point of origin to point of termination.

(b) EVALUATION OF COMPLIANCE IN SELECTED EXERCISES.—In conducting the military exercises described in subsection (c), the Secretary of Defense shall ensure that at least 25 of those exercises (referred to in this section as "Year 2000 simulation exercises") are conducted so as to include a simulated year 2000 in accordance with the plan submitted under subsection (a). The Secretary of Defense shall ensure that at least two of those exercises are conducted by the commander of each unified or specified combatant command.

(c) COVERED MILITARY EXERCISES.—A military exercise referred to in subsections (a) and (b) is a military exercise conducted by the Department of Defense, during the period beginning on January 1, 1999, and ending on September 30, 1999—

(1) under the training exercises program known as the "CJCS Exercise Program";

(2) at the Naval Strike and Air Warfare Center, the Army National Training Center, or the Air Force Air Warfare Center; or

(3) as part of Naval Carrier Group fleet training or Marine Corps Expeditionary Unit training.

(d) AUTHORITY FOR EXCLUSION OF SYSTEMS NOT CAPABLE OF PERFORMING RELIABLY IN YEAR 2000 SIMULATION.—(1) In carrying out a Year 2000 simulation exercise, the Secretary of Defense may exclude a particular information technology or national security system from the year 2000 simulation phase of the exercise if the Secretary determines that the system would be incapable of performing reliably during the year 2000 simulation phase of the exercise. In such a case, the system excluded shall be replaced in accordance with the year 2000 contingency plan for the system.

(2) If the Secretary of Defense excludes an information technology or national security system from the year 2000 simulation phase of an exercise as provided in paragraph (1), the Secretary shall notify Congress of that exclusion not later than two weeks before commencing that exercise. The notice shall include a list of each information technology or national security system excluded from the exercise, a description of how the exercise will use the year 2000 contingency plan for each such system, and a description of the effect that continued year 2000 non-compliance of each such system would have on military readiness.

(3) An information technology or national security system with cryptological applications that is not capable of having its internal clock adjusted forward to a simulated later time is exempt from the year 2000 simulation phase of an exercise under this section.

(e) DEFINITIONS.—For the purposes of this section:

(1) The term "information technology" has the meaning given that term in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(2) The term "national security system" has the meaning given that term in section 5142 of such Act (40 U.S.C. 1452).

SEC. . During the current fiscal year and hereafter, no funds appropriated or otherwise available to the Department of Defense may be used to award a contract to, extend a contract with, or approve the award of a sub-contract to any person who within the preceding 15 years has been convicted under section 704 of title 18, United States Code, of the unlawful manufacture or sale of the Congressional Medal of Honor.

Mr. YOUNG of Florida (during the reading.) Mr. Chairman, I ask unani-

mous consent that the remainder of the bill through page 116, line 22, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. Are there any amendments to that portion of the bill?

Mr. SANDERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I had an amendment at the desk, but I am not going to offer that. Instead, I would like to enter into a colloquy with the gentleman from Florida (Mr. YOUNG), chairman of the Subcommittee on National Security.

Mr. Chairman, as the gentleman is aware, the National Guard Starbase program, which has reached almost 200,000 children, is a community-based National Guard program that helps kids in grades 4 through 6 learn hands-on with Guard pilots and technicians. This public school outreach program boosts kids' learning and test scores in math, science, and technology applications. At the same time, Starbase stresses the prevention of drug abuse and builds understanding of self-esteem, goal-setting and teamwork. Unfortunately, as the gentleman is aware, this important project did not receive funding in the Defense appropriations bill.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. I would say to the gentleman that yes, I am aware of the program, and the gentleman from Vermont is correct that the committee was not able to fund the Starbase program in this bill, due to the lack of authorization.

Mr. SANDERS. This in my view is very unfortunate, but I am hopeful that the gentleman will work to support the National Guard Starbase program in conference and bring the funding level to the \$6 million appropriated in the other body.

Mr. YOUNG of Florida. If the gentleman will yield further, again I thank the gentleman from Vermont for his efforts to secure funding for this program and assure the gentleman that I will do my best to match the level appropriated in the Senate.

Mr. SANDERS. I thank the gentleman for his commitment. I see that the gentleman from South Dakota (Mr. THUNE), a strong supporter of the Starbase program, is also on the floor.

I yield to the gentleman from South Dakota.

Mr. THUNE. Mr. Chairman, I thank the gentleman from Vermont for bringing this important matter forward. I would also like to thank the gentleman from Florida (Mr. YOUNG), the chairman of the Subcommittee on National Security, for the excellent leadership

that he and the Committee on Appropriations have taken in matters regarding our Nation's defense. Additionally, I would like to thank the gentleman from Florida for his willingness to work with the gentleman from Vermont and me to ensure this important National Guard program is funded. I would just simply ask a question of the distinguished chairman. Am I correct in restating that the gentleman is committed to match the level of funding found in the Senate Defense appropriations bill for the Starbase program?

Mr. YOUNG of Florida. If the gentleman from Vermont will yield further, I would respond to the gentleman from South Dakota and thank him for his interest in this program and say yes, I am committed to working with both gentlemen to secure funding for the program. I would also like to thank the gentleman from South Dakota for his attention to defense of our Nation and also for his efforts in working with the gentleman from Vermont to bring this matter to the attention of the committee.

Mr. THUNE. Again I thank the distinguished gentleman. As the gentleman knows, the National Guard Starbase program is an important initiative in my State of South Dakota. This program is strongly supported by the South Dakota National Guard and teachers all across my great State. It has impacted the lives of students and Guard personnel alike. We all recognize the importance of encouraging students to enter into the fields of science and math in our country. This program bolsters those efforts by reaching over 200,000 students across this country. The \$6 million allocation would be a very small investment in a program that has shown great returns in the education of our Nation's youth. I am pleased that the gentleman from Florida and the gentleman from Vermont are working with me on this matter.

Mr. SANDERS. Mr. Chairman, I thank the gentleman from South Dakota for his comments.

Mr. Chairman, the Starbase program is a chance for Members in the House to support their National Guard and to fund an educational program that represents just the kind of policy initiatives we need in this country. It is endorsed by the National Guard Association of the United States and cosponsored by the gentleman from South Dakota (Mr. THUNE), the gentleman from Michigan (Mr. BONIOR) and the gentleman from Texas (Mr. BENTSEN). I would just conclude by thanking the gentleman from Florida very much and the other Members for their support for this important initiative.

AMENDMENT OFFERED BY MR. BENTSEN

Mr. BENTSEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BENTSEN:

At the end of the bill (preceding the short title), insert the following:

SEC. ____ None of the funds appropriated or otherwise made available by this Act may

be used for the transportation into the United States of polychlorinated biphenyls manufactured outside the United States and owned by the Department of Defense except as provided for in section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

Mr. BENTSEN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BENTSEN. Mr. Chairman, I rise to offer an amendment to ensure that the Department of Defense complies with all the rules and regulations of the Toxic Substances Control Act. This amendment prohibits the Defense Department from using any funds appropriated by this act to transport into the United States polychlorinated biphenyls manufactured outside the United States and owned by the Department of Defense, except as provided for in section 6(e) of the Toxic Substances Control Act.

This amendment is necessary because the Department of Defense (DoD) has had language inserted in the Senate Defense Authorization bill that would allow for the unfettered importation of PCBs into the United States. Similar language was initially inserted in the House version of the bill, but it was subsequently deleted. This amendment prohibits the DoD from turning our nation into the world's chemical wastebasket through the transportation of foreign-produced PCB waste into the United States for permanent disposal.

Because of serious environmental and public health hazards associated with PCBs, Congress in 1976 banned both their manufacture and importation under TSCA. PCBs are a dangerous class of chemicals that collect in the body and cause a range of adverse health effects including cancer, reproductive damage, and birth defects. When incinerated, PCBs release dioxin—one of the most toxic chemicals known. PCBs accumulate in the environment and move towards the top of the food chain, contaminating fish, birds, and ultimately humans. They are the only chemicals Congress designated for phase-out under TSCA.

The language in Section 321 of the Senate Defense Authorization bill, S. 2060, would overturn over twenty years of sound environmental law recently affirmed by the 9th Federal Circuit Court and jeopardize the health and safety of Americans by allowing the importation of foreign-produced PCBs. Further, this change has never been reviewed by the Commerce Committee, which has jurisdiction over TSCA. The DoD has demonstrated a clear lack of good environmental judgement as underscored by several recent articles in the Baltimore Sun documenting the hazardous and environmentally unsound techniques being used to dismantle decommissioned U.S. Navy ships. The DoD allowed unscrupulous salvage operators to dismantle U.S. Navy ships without proper environmental controls or worker protections. Asbestos was removed by workers who were not provided respirators and then disposed of by heaving it over the side of ship into the water. I believe it is unwise to allow the DoD to continue to make or alter environmental policy without proper oversight from Congress.

My amendment also reaffirms the unanimous 1997 ruling by the Ninth Circuit U.S. Court of Appeals that a similar attempt by EPA to allow the importation of PCBs had violated TSCA. Chief Judge Proctor Hug wrote, "EPA lacked the statutory authority to promulgate the Import Rule, which violates the PCB manufacture ban contained in the Toxic Substances Control Act."

It is important to note that current law already provides an exemption that allows the DoD to return PCB waste to the United States if such PCBs were purchased in the United States, shipped to an overseas military base, have been continuously under U.S. control, and now need to be returned for disposal. This exemption ensures that any PCBs exported from the United States to one of our military installations abroad can be returned.

Mr. Chairman, the DoD does not have any legitimate reasons for wanting to overturn the ban on the importation of PCBs. They are trying to slip in this change without prior Congressional review and approval. I urge my colleagues to support my amendment so that the House can express its position on this issue and the United States can be protected from becoming a toxic waste dump for the world.

Mr. MURTHA. Mr. Chairman, will the gentleman yield?

Mr. BENTSEN. I yield to the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Chairman, we are anxious to accept the gentleman's amendment and appreciate his work in this area.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. BENTSEN. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, we agree that the Department of Defense should follow the law and obey the law. We appreciate the gentleman calling this to the attention of the House. We accept the amendment.

Mr. BENTSEN. Mr. Chairman, I want to thank the chairman and the ranking member both for this and for their work on the DREAMS project which they have funded in this bill which is in my district.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. BENTSEN).

The amendment was agreed to.

AMENDMENT NO. 1 OFFERED BY MR. SANDERS

Mr. SANDERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SANDERS: At the end of title VIII (page ____, after line ____), insert the following new section:

SEC. ____ None of the funds appropriated or otherwise made available by this Act may be used to enter into or renew a contract with any company owned, or partially owned, by the People's Republic of China or the People's Liberation Army of the People's Republic of China.

Mr. SANDERS. Mr. Chairman, my amendment sponsored by the gentleman from New Jersey (Mr. SMITH), the gentleman from New York (Mr. HINCHEY) and the gentlewoman from

Florida (Mrs. FOWLER) is very simple and straightforward. It bans the Department of Defense from buying products from Chinese state-owned companies as well as companies owned by the People's Liberation Army.

Mr. Chairman, I think that it might come as a surprise to many Members of this body that the Defense Department now builds the B-2 bomber with parts made by a company owned by the People's Republic of China.

Mr. MURTHA. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Chairman, I know the gentleman has discussed this with me and a number of members of the subcommittee. We appreciate his bringing this to our attention. We certainly accept it on our side of the aisle.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I appreciate the fact that the gentleman discussed this amendment with me several days ago. We agree and accept the amendment.

Mr. SMITH of New Jersey. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from New Jersey.

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

Mr. SMITH of New Jersey. Mr. Chairman, I want to commend the gentleman, and I am proud to be a cosponsor of the amendment. We should have nothing to do with the oppressive PLA. Making them part of the defense procurement process in this country is patently absurd. I thank the gentleman for his amendment.

I would like to thank my good friend, Representative SANDERS, for taking the initiative in preparing this amendment, of which I am a proud cosponsor. This amendment simply requires that companies owned by the People's Republic of China and its People's Liberation Army not be allowed to profit from contracts with the United States Department of Defense.

Over the past several years, the Chinese dictatorship and its military enforcer, the People's Liberation Army, have begun turning a profit using a vast web of state-owned companies and surrogate entities. These commercial entities are involved with everything from arms sales to hotel management, and are an important source of clandestine revenue for the Beijing regime.

The billions of dollars and technological know-how gained by these commercial ventures are helping to underwrite a massive, surreptitious modernization of the Chinese armed forces. Although the Chinese government claims that it spent only \$11 billion on its armed forces last year, the U.S. Arms Control and Disarmament Agency estimates that the actual figure is nearly six times that amount. Because the revenue generated by PRC and PLA-owned enterprises is not publicly disclosed or included in the Chinese government's declared budget, we cannot be certain of its extent. But responsible estimates by

international experts reach into the billions of dollars.

The Sanders-Smith amendment is important to the struggle for human rights. The People's Republic of China and the PLA still defiantly refuse to face the truth about their massacre of hundreds of peaceful democracy advocates in Tiananmen Square nine years ago this month. The PLA is engaged in the brutal occupation of Tibet, the repression of religious free exercise, and the sale of human organs from executed prisoners. The Chinese government uses forced abortion and sterilization as an officially sanctioned component of its population control program. According to testimony provided by my Subcommittee on numerous occasions, state-owned entities are also exploiting slave labor in the Chinese loagai. Our Defense Department must not enrich and empower the repressive forces of the Chinese government.

The Sanders-Smith amendment is also justified by strategic concerns:

Chinese state-owned companies routinely engage in destabilizing activities, such as the sale of weapons—sometimes including weapons of mass destruction—to countries such as Iran, Burma, Pakistan, and Saudi Arabia. And PLA-owned companies have been caught smuggling weapons into the United States. A 1996 FBI sting operation intercepted 2,000 AK-47 machine guns apparently intended for use by terrorists or other violent criminals.

PLA and PRC-owned enterprises are also procuring cutting-edge technology—such as supercomputers and advanced telecommunications equipment—that can be put to military use. Because these companies ostensibly use such technology for commercial purposes, they are often not subject to the export controls that would be imposed on military transfers. An essay by Chinese General Ding Henggao [DING heng-GOW], translated by the Pentagon, confirms that China is actively pursuing "possible transfers from commercial technology to defense use."

Against this background, the Sanders-Smith amendment deserves universal, bipartisan support. It merely states that the United States Department of Defense must take care not to subsidize the Chinese military by awarding contracts to PLA and PRC-owned enterprises. American security and American ideals demand no less.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. SANDERS).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read the final lines of the bill.

The Clerk read as follows:

This Act may be cited as the "Department of Defense Appropriations Act, 1999".

The CHAIRMAN. If there are no further amendments, under the rule the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SMITH of New Jersey) having assumed the chair, Mr. CAMP, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4103) making appropriations for the Department of Defense for the fiscal year ending September 30, 1999, and for other purposes, pursuant to House Resolution 484, he

reported the bill, as amended pursuant to that rule, back to the House with further sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. 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.

The SPEAKER pro tempore. The question is on the passage of the bill.

Pursuant to clause 7 of rule XV, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 358, nays 61, not voting 14, as follows:

[Roll No. 266]
YEAS—358

Abercrombie	Combest	Green
Ackerman	Condit	Greenwood
Aderholt	Cook	Gutknecht
Allen	Cooksey	Hall (OH)
Andrews	Costello	Hall (TX)
Archer	Cox	Hansen
Armey	Cramer	Harman
Bachus	Crapo	Hastert
Baker	Cubin	Hastings (FL)
Baldacci	Cummings	Hastings (WA)
Ballenger	Cunningham	Hayworth
Barcia	Danner	Hefley
Barr	Davis (FL)	Hefner
Barrett (NE)	Davis (VA)	Herger
Bartlett	Deal	Hill
Barton	DeGette	Hilleary
Bass	DeLauro	Hilliard
Bateman	DeLay	Hinojosa
Bentsen	Diaz-Balart	Hobson
Bereuter	Dickey	Holden
Berman	Dicks	Horn
Bilbray	Dixon	Hostettler
Bilirakis	Dooley	Houghton
Bishop	Doolittle	Hoyer
Blagojevich	Doyle	Hulshof
Bliley	Dreier	Hunter
Blumenauer	Duncan	Hutchinson
Blunt	Dunn	Hyde
Boehlert	Edwards	Inglis
Boehner	Ehrlich	Istook
Bonilla	Emerson	Jackson-Lee
Bonior	Engel	(TX)
Bono	English	Jefferson
Borski	Ensign	Jenkins
Boswell	Eshoo	John
Boucher	Etheridge	Johnson (CT)
Boyd	Evans	Johnson, E. B.
Brady (PA)	Everett	Johnson, Sam
Brady (TX)	Ewing	Jones
Brown (FL)	Farr	Kanjorski
Bryant	Fawell	Kasich
Bunning	Fazio	Kelly
Burr	Foley	Kennedy (MA)
Burton	Forbes	Kennedy (RI)
Buyer	Ford	Kennelly
Callahan	Fossella	Killdee
Calvert	Fowler	Kilpatrick
Camp	Fox	Kim
Canady	Frost	King (NY)
Cannon	Galleghy	Kingston
Capps	Ganske	Klink
Cardin	Gejdenson	Klug
Carson	Gekas	Knollenberg
Castle	Gephardt	Kolbe
Chabot	Gibbons	LaHood
Chambliss	Gilchrest	Lampson
Chenoweth	Gillmor	Lantos
Christensen	Gilman	Largent
Clay	Goode	Latham
Clayton	Goodlatte	LaTourrette
Clement	Goodling	Lazio
Clyburn	Gordon	Leach
Coble	Goss	Levin
Coburn	Graham	Lewis (CA)
Collins	Granger	Lewis (GA)

Lewis (KY)	Pelosi	Smith (MI)
Linder	Peterson (MN)	Smith (NJ)
Livingston	Peterson (PA)	Smith (OR)
LoBiondo	Pickering	Smith (TX)
Lowey	Pickett	Smith, Adam
Lucas	Pitts	Smith, Linda
Maloney (CT)	Pombo	Snowbarger
Maloney (NY)	Pomeroy	Snyder
Manzullo	Porter	Solomon
Martinez	Portman	Souder
Mascara	Poshard	Spence
Matsui	Price (NC)	Spratt
McCarthy (MO)	Pryce (OH)	Stabenow
McCarthy (NY)	Quinn	Stearns
McCollum	Radanovich	Stenholm
McCrery	Rangel	Stokes
McHale	Redmond	Strickland
McHugh	Regula	Stump
McInnis	Reyes	Stupak
McIntosh	Riggs	Sununu
McIntyre	Riley	Talent
McKeon	Rivers	Tanner
McNulty	Rodriguez	Tauscher
Meehan	Roemer	Tauzin
Meek (FL)	Rogan	Taylor (MS)
Menendez	Rogers	Taylor (NC)
Metcalfe	Rohrabacher	Thomas
Mica	Ros-Lehtinen	Thompson
Millender-	Rothman	Thornberry
McDonald	Roukema	Thune
Miller (FL)	Roybal-Allard	Thurman
Mink	Ryun	Tiahrt
Moakley	Sabo	Tierney
Mollohan	Salmon	Torres
Moran (KS)	Sanchez	Trafficant
Moran (VA)	Sandlin	Turner
Murtha	Sawyer	Visclosky
Myrick	Saxton	Walsh
Neal	Scarborough	Wamp
Nethercutt	Schaefer, Dan	Waters
Neumann	Schaffer, Bob	Watkins
Ney	Schumer	Watts (OK)
Northup	Scott	Waxman
Norwood	Serrano	Weldon (FL)
Nussle	Sessions	Weldon (PA)
Ortiz	Shadegg	Weller
Oxley	Shaw	Wexler
Packard	Sherman	Weygand
Pallone	Shimkus	White
Pappas	Shuster	Whitfield
Parker	Sisisky	Wicker
Pascrell	Skaggs	Wise
Pastor	Skeen	Wynn
Paxon	Skelton	Young (AK)
Pease	Slaughter	Young (FL)

NAYS—61

Barrett (WI)	Hoekstra	Owens
Becerra	Hooley	Paul
Berry	Jackson (IL)	Payne
Brown (CA)	Johnson (WI)	Petri
Brown (OH)	Kind (WI)	Rahall
Campbell	Klecza	Ramstad
Conyers	Kucinich	Royce
Coyne	Lee	Rush
Davis (IL)	Lofgren	Sanders
DeFazio	Luther	Sanford
Delahunt	McDermott	Sensenbrenner
Deutsch	McGovern	Shays
Doggett	McKinney	Stark
Ehlers	Meeks (NY)	Towns
Fattah	Miller (CA)	Upton
Filner	Minge	Velazquez
Frank (MA)	Morella	Vento
Franks (NJ)	Nadler	Watt (NC)
Furse	Oberstar	Woolsey
Gutierrez	Obey	
Hinchev	Olver	

NOT VOTING—14

Baessler	Hamilton	Markey
Crane	Kaptur	McDade
Dingell	LaFalce	Wolf
Frelinghuysen	Lipinski	Yates
Gonzalez	Manton	

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Mr. HOEKSTRA changed his vote from "yea" to "nay."

Mr. PICKERING and Ms. RIVERS changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. FRELINGHUYSEN. During the vote on final passage of H.R. 4103, the National Security Appropriations Act, I was on the floor and intended to vote but the machine failed to register my vote. Had it been registered, I would have voted yes on final passage of the bill.

APPOINTMENT AS MEMBERS TO COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616) as amended by Section 2(d) of Public Law 102-586, the Chair announces the Speaker's appointment of the following members on the part of the House to the Coordinating Council on Juvenile Justice and Delinquency Prevention:

Mr. William Robert Byars, Jr., South Carolina, to a one year term;

Ms. Adele L. Grubbs, Georgia, to a three year term.

There was no objection.

APPOINTMENT AS MEMBERS TO NATIONAL SKILL STANDARDS BOARD

The SPEAKER pro tempore. Without objection, and pursuant to the provisions of Section 503(b)(3) of Public Law 103-227, the Chair announces the Speaker's reappointment of the following members on the part of the House to the National Skills Standards Board for four year terms:

Mr. James D. Burge, Washington, D.C.;

Mr. Kenneth R. Edwards, Rockville, Maryland.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The Speaker pro tempore laid before the House the following resignation as a member of the Committee on Science:

HOUSE OF REPRESENTATIVES,

Washington, DC, June 24, 1998.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR SPEAKER GINGRICH: I am writing to resign my position on the House Science Committee in exchange for a position on the House National Security Committee. Thank you for your assistance with this matter and please contact me if you have any questions.
Sincerely,

ELLEN O. TAUSCHER,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.
There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON SMALL BUSINESS

The SPEAKER pro tempore laid before the House the following resigna-

tion as a member of the Committee on Small Business:

HOUSE OF REPRESENTATIVES,

Washington, DC, June 24, 1998.

Hon. NEWT GINGRICH,
Speaker of the House, House of Representatives, U.S. Capitol, Washington, DC.

DEAR MR. SPEAKER: I hereby resign as a member of the Committee on Small Business.

With kind regards, I am

Sincerely yours,

VIRGIL H. GOODE.

The SPEAKER pro tempore. Without objection, the resignation is accepted.
There was no objection.

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. FAZIO of California. Mr. Speaker, at the direction of the Democratic Caucus, I offer a privileged resolution (H. Res. 492) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

HOUSE RESOLUTION 492

Resolved, That the following named Members be, and they are hereby, elected to the following standing committees of the House of Representatives:

To the Committee on Banking and Financial Services, VIRGIL GOODE of Virginia.

To the Committee on National Security, ELLEN TAUSCHER of California, ROBERT BRADY of Pennsylvania.

To the Committee on Small Business, ROBERT BRADY of Pennsylvania.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GRANTING MEMBERS OF THE HOUSE PRIVILEGE TO EXTEND THEIR REMARKS IN THE CONGRESSIONAL RECORD ON THURSDAY, JUNE 25, 1998

Mr. MCINNIS. Mr. Speaker, I ask unanimous consent that all Members be permitted to extend their remarks and to include extraneous material in that section of the RECORD entitled "Extension of Remarks" on Thursday, June 25, 1998.

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

There was no objection.

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SPECIAL ORDERS

The SPEAKER pro tempore (Mr. LAHOOD). Under the Speaker's announced policy of January 7, 1997, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

CONTROVERSIAL ARTICLE REGARDING KENNETH W. STARR, INDEPENDENT COUNSEL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

Mr. CONYERS. Mr. Speaker, I will place in the RECORD an article that has become controversial in the fact that it begins to examine more carefully the question surrounding the Independent Counsel, Kenneth W. Starr, in connection with his off-the-record contacts with Members of the media. I ask that this material be included.

The material referred to is as follows:

[From Brill's Content, July/August 1998]

PRESSGATE

(By Steven Brill)

What makes the media's performance a true scandal, a true example of an institution being corrupted to its core, is that the competition for scoops so bewitched almost everyone that they let the man in power write the story—once Tripp and Goldberg put it together for him.

It began with high fives over the telephone. "It's breaking! It's breaking! We've done it," Lucianne Goldberg screamed into her phone in Manhattan to her son in Washington. It was 7:00 A.M., Wednesday, January 21.

"This was my mom's day," says Jonah Goldberg, 29, referring to the controversial New York literary agent who had now shepherded the Monica Lewinsky story into the world's headlines and onto Independent Counsel Kenneth Starr's radar screen. "Here was everything we'd done since the fall breaking right there on Good Morning America, with Sam Donaldson standing in front of the White House and George Stephanopoulos talking . . . impeachment."

"For five years I had had all kinds of Clinton stories that I had tried to peddle," Lucianne Goldberg recalled during a series of interviews. "Stories from the state troopers, from other women, you name it. And for five years I couldn't get myself arrested. Now I was watching this [and] I was lovin' it. Spikey and Linda and us had really done it." "Spikey" is Lucianne Goldberg's pet name for Michael Isikoff, the relentless Newsweek reporter whose stories about President Clinton's alleged sexual misconduct—from Paula Jones to Kathleen Willey and now to Monica Lewinsky—had led the way on this sometime lonely beat. "Linda" is Linda Tripp, the one-time White House secretary now known more for taping than typing. For four years she had been a frustrated client of Goldberg's, hoping to sell a White House scandal memoir.

As of this morning, Tripp, under Lucianne Goldberg's tutelage, had constructed the material for Isikoff's greatest scoop—often according to his probably unwitting specifications. The two women had even steered it in a way that now allowed Ken Starr to hone in on the president and the intern. Then, by leaking the most damaging details of the investigation to a willing, eager press corps Starr was able to create an almost complete presumption of guilt. Indeed, the self-righteousness with which Starr approached his role—and the way he came to be able to count on the press's partnership in it—generated a hubris so great that, as detailed below, he himself will admit these leaks when asked.

The abuses that were Watergate spawned great reporting. The Lewinsky story has reversed the process. Here, an author in quest of material teamed up with a prosecutor in quest of a crime, and most of the press became a cheering section for the combination that followed. As such, the Lewinsky saga raises the question of whether the press has abandoned its Watergate glory of being a check on official abuse of power. For in this story the press

seems to have become an enabler of Starr's abuse of power.

An examination of the Lewinsky story's origins and a day-by-day review of the first three weeks of the media coverage that followed, suggest that as it has careened from one badly sourced scoop to another in an ever more desperate need to feed its multi-media, 24-hour appetite, the press has abandoned its treasured role as a skeptical "fourth estate." This story marks such a fundamental change in the press's role that the issues it raises will loom long after we determine (if we ever do) whether the president is guilty of a sexual relationship with the intern, obstruction of justice, or both.

LOOKING FOR A TRUE CRIME STORY

It started with the 1993 death of Deputy White House Counsel Vincent Foster, Jr. In some anti-Clinton circles, Foster's suicide became what Lucianne Goldberg calls "the best true crime story out there. . . . I was interested in getting a book out about Foster's death, and Tony Snow [the conservative columnist and now-Fox newsmen] suggested I talk to Linda Tripp."

A veteran government secretary, Tripp, then 43, had been assigned to work for White House Counsel Bernard Nussbaum. Tripp claimed to have been the last person to see Foster alive, and, as with many aspects of her jobs, she made more of this jeopardy-like fact than it was worth.

Following Nussbaum's resignation in 1994, Tripp was moved to a job at the Pentagon. She got a rise, but, in terms of status, it was a comedown.

Goldberg was a good match for Tripp. A gravelly-voiced, chain-smoking 63 year-old with a self-described "big mouth," Goldberg is a West Side Manhattanite who takes delight in defying her neighborhood's liberal chic. She runs in conservative circles, makes no secret of her disdain for the president, and her acknowledged past includes doing dirty tricks for the Nixon campaign.

Yet the reception Tripp got from Goldberg was a letdown. "She had been the last person to see Vince Foster, and she hated the Clinton people and told me stories about the clothes they wore and how they f—ked around with each other. . . . But was that a book? Come on," says Goldberg.

"I kinda liked her," Goldberg continues. "So we kept in touch, and we did put a proposal together."

As *The New Yorker* reported in a February article by Jane Mayer that deserves credit for being the first to spot the Goldberg—book deal impetus for the Tripp-Lewinsky story, the proposal contained a purported but nonspecific chapter on sexual hijinks.

THE "PRETTY GIRL"

In May of 1996, Tripp told Goldberg about a former White House interim who had been transferred to the Pentagon and was working with Tripp in the public affairs office. "One day Linda called and told me about what she called 'the pretty girl,' who'd become 'her friend,'" Goldberg recalls. "She said the pretty girl said she had a boyfriend in the White House. Linda was excited. This might be material."

"A few weeks later," says Goldberg, "Linda told me the pretty girl's name [Monica Lewinsky] and said the boyfriend was Clinton."

But, says Goldberg, "even with proof, which she didn't have, it was just another Clinton girlfriend story. Maybe the girlfriend could do a book, but not Linda."

"I remember for a while my mom thinking Linda could get us Monica as a client," says Jonah Goldberg, a television producer who also runs a Washington office for his mother.

Nonetheless, according to the two Goldbergs, Tripp repeatedly rebuffed their hints that they meet the former intern.

Although Tripp and Lucianne Goldberg kept up their relationship through 1996, Goldberg did not push the book idea. "It wasn't high on my list," says Goldberg. "No one seemed to care about this guy screwing everything in sight."

ON THE RADAR SCREEN

Perceptions about the president and sex changed markedly as 1997 began. In January, Newsweek published a cover story on the Paula Jones suit declaring that the case deserved to be taken seriously. The Newsweek story—along with the Supreme Court's hearing (also in January) of the Jones lawyers' appeal that their case not be delayed until after President Clinton had left office—suddenly made the president's alleged sexual misconduct and his resulting legal troubles topic A.

ISIKOFF ON THE HUNT

Newsweek now allowed Isikoff, its lead reporter on the Jones story, to add the Clinton sex allegations to a beat that already included not only Whitewater, but also the blossoming controversy surrounding the funding of the 1996 Democratic campaign.

A native New Yorker who grew up on Long Island, Isikoff, 46, started in journalism as a reporter for a Washington-based news service initially funded by Ralph Nader. "It was the Woodward and Bernstein era," he says. "Being a reporter was exciting."

For him, it still is. A journalist's version of Colombo, with a perpetually whiny voice and a awkward, nervous look, Isikoff instinctively distrusts power. Now, as he patrolled his expanded beat in early 1997, Isikoff got a tip from one of Jones's lawyers, who had heard that there was a volunteer White House worker who had been groped by the president in 1993 when she'd met with him seeking a job.

Isikoff eventually tracked down Kathleen Willey, and after he had pestered her over a period of several months, she talked about the incident but refused to be quoted. According to Isikoff, Willey suggested that he "go ask Linda Tripp" for confirmation, because Tripp had seen Willey after she'd left the Oval Office on the day of the alleged incident.

Yes, she had seen Willey emerge from the Oval Office disheveled, Tripp told Isikoff, according to his subsequent story. And yes, Willey claimed the president had kissed her and fondled her. But, no, Tripp declared, Willey was not upset; she seemed happy about the president's attention.

Isikoff says that he and his editors were reluctant to go with that confusing account, until they learned in late July that the Jones lawyers had subpoenaed Willey (but not Tripp, whom they did not know about). Now Newsweek had a hook—a legitimate more-than-just-sex hook—for the story.

The result, entitled "A Twist In Jones v. Clinton," was a tortured account of the potential role that a new but reluctant accuser, Kathleen Willey, might have in the Jones case. Isikoff quoted Tripp as confirming the incident but disputing whether Willey had seemed unhappy about it.

In the days that followed, Isikoff says, he was surprised that the rest of the press largely ignored the article, seeing it as just part of the detritus of the Smarmy Jones suit.

Linda Tripp did not ignore it.

"Linda tends to view her role in things as much more important than it is," says Jonah Goldberg, "And she was both thrilled and terrified by the play Isikoff gave her in this piece. She thought the whole world was now watching her. And she thought she also could now come to center stage with what she knew about Monica."

In fact, according to Isikoff, from the moment he had first talked to Tripp in March

1997 about Willey, "she was telling me that I had the right idea but that I was barking up the wrong tree with Kathleen Willey. She kind of steered me away from Willey."

At a meeting in a bar near the White House in April 1997, Tripp again pushed Isikoff to consider a better story, one about an intern and the president. But Isikoff remained focused on Willey. Why? Because, he says, he knew that there was a link from her to a story that was about more than sex: the Jones trial. He also says that he made no bones about the importance of that link to Tripp.

For Tripp, the motive for filling that need was unambiguous. "I always told Linda that for her to have a real book deal she had to get some of what she knew into a mainstream publication of some kind," recalls Goldberg. "I drummed that into her. Without that, she was just another kook."

According to Goldberg, it was soon after the Newsweek article appeared that Tripp—at Goldberg's urging—went to a Radio Shack store and bought a \$100 tape recorder so that she could begin gathering her proof.

THE TAPES

In October, the Goldbergs tried to advance the story by getting Isikoff to listen to Tripp's tapes of Lewinsky talking to her about sex with Clinton. Saying she was Tripp's "media adviser," as Isikoff recalls it, Goldberg invited him to a meeting at Jonah Goldberg's apartment. She told him he wouldn't regret it.

According to all who were present (except Tripp, who would not comment for this article), Isikoff was told Lewinsky's name. Two tapes were on the coffee table. Lucianne offered to queue up the first one.

Isikoff declined.

"I knew that if I listened to these tapes I would become part of the process, because I knew the taping was ongoing," explains Isikoff, who also adds that he was in a hurry to get to CNBC, where he was a paid Clinton sex scandal pundit.

GET ME SOMETHING TANGIBLE

But Isikoff heard enough of a description of what was on the tape to request more. He wanted "a tangible way to check this out with some other source," recalls Jonah Goldberg. "And he needed more than just sex. He said he needed other sources and he needed for this to relate to something official." Isikoff confirms this conversation.

To Isikoff, he was simply musing aloud about what would make a legitimate Newsweek story. To the Goldbergs and Tripp, he was writing out specs. And by the end of October, Isikoff's hopes had been fulfilled on both counts.

First, they produced something tangible. Lewinsky began sending letters and one package to presidential secretary Betty Currie at the White House, allegedly so that Currie could pass them to the president. What was in that package? Tripp and Goldberg told Isikoff it contained a lurid sex tape. Goldberg then told Isikoff how to get copies of the receipts for those letters and the package. It was easy—because the courier service employed by Lewinsky is owned by Goldberg's brother's family.

"We told Linda to suggest that Monica use a courier service to send love letters to the president," says Lucianne Goldberg. "And we told her what courier service to use. Then we told Spikey [Isikoff] to call the service." (Isikoff says he later found out that the service was owned by Goldberg's brother's family, but that for him the only issue was the fact that Lewinsky had, indeed, sent the letters and, one case, a package that seemed like a tape, according to the courier who delivered it to the White House—and who was made available for Isikoff to interview by the eager-to-be-helpful courier service.)

As for something "official," Tripp and Lucianne Goldberg told Isikoff that Lewinsky, who was planning to move to New York with her mother, was going to get a job there working for U.N. ambassador Bill Richardson. In fact, Richardson himself was going to meet with the lowly former intern at the Watergate over breakfast in a few days to talk about the job. Tripp and Goldberg reported. In other words, they contended, the president was getting his girlfriend a government job.

"That was interesting enough that we sent a reporter—not me, because I was now recognizable from all my TV stuff—to stake out the Watergate for breakfast," says Isikoff.

Newsweek's Daniel Klaidman waited from 7:00 until 11:30 a.m. But Richardson and Lewinsky never appeared. "That really worried my editors. . . . We didn't know that Richardson had an apartment there and they were meeting there," says Isikoff.

It was at about this time—October 1997—that the new Paula Jones legal team started getting anonymous calls from a woman saying that Linda Tripp and Monica Lewinsky would be well worth subpoenas. Each of what one member of the Jones team estimates were three or four calls got increasingly less vague.

Who made those calls?

"My mom didn't do it," Jonah Goldberg says. "Linda did, but I can tell you that she didn't get the idea on her own."

Lucianne Goldberg says she isn't sure Linda called them, "but it wouldn't surprise me, and it made sense, didn't it?"

Did Lucianne encourage her to make the calls? "Do you think I had to?" asks Goldberg.

Did she encourage her? "Not exactly, but, hell, I guess you could say so."

What seems clear is that no one other than one of the Goldbergs or Tripp would have had the knowledge or the motive to have tipped off the Jones lawyers. And whoever made the calls, they were persuasive enough that by just before Christmas both Lewinsky and Tripp had been subpoenaed.

"That's when this heated up," says Isikoff. "When I found out they had been subpoenaed, I could see the perjury possibilities and everything else. It was starting to be a real story."

In short, the exact dynamic that had made the Willey tale a publishable story for Isikoff—that it was part of the Jones trial—had now apparently been engineered by the Goldberg-Tripp book-deal team. Moreover, those similarly orchestrated "receipts" from the courier service gave Isikoff the tangible proof he said he needed.

"I guess I'd like to think this was more a Goldberg conspiracy than a right-wing conspiracy," Jonah concludes when asked about this orchestration.

MONICA BECOMES HYSTERICAL

According to the Goldbergs' accounts of the Lewinsky-Tripp tapes and to Isikoff's account of the tapes he eventually heard, when Lewinsky got her subpoena in December she became hysterical. On the tapes her hysteria comes off as a fear of how to decide whether to rat on the president or risk perjury—a fear exacerbated by Tripp's declaration to her that she, Tripp, was going to tell the truth about what Lewinsky had told her about the relationship.

As 1997 drew to a close, Isikoff says he knew he'd be coming back from his Christmas vacation in January to what might be a major story.

'CLOWNS IN A CAR'

"That first week in January," recalls Lucianne Goldberg, "we were kind of panicked. You had [Lewinsky] on the phone to Linda . . . saying she didn't know what to do

and that she was gonna sign an affidavit saying she had never had any sex with the president"—an affidavit that Lewinsky did in fact sign on January 7. "And you had Linda worried about her own testimony and about what Isikoff was going to do."

Goldberg says the Tripp was now worried enough to consult Kirby Behre, the lawyer she had used when she had testified in the Whitewater hearings. But when Behre (who declined all public comment for this article) was told about the tapes, his suggestion, according to Goldberg, shocked Tripp and Goldberg: "He told her he was going to go to Bob Bennett"—the president's defense lawyer in the Jones case—" . . . and get Bennett to settle the Jones case and avoid all this."

In fact, Tripp and the Goldbergs wanted anything but a settlement that would see Tripp's cameo role in history evaporate. They were headed in the opposite direction. What they had pushed from a tale about a presidential affair to a story about a new witness in a civil suit they now wanted to push to the next stop—a criminal case. "We wanted a [new] lawyer so that Linda could go to Ken Starr," explains Lucianne Goldberg.

By Friday, January 9, Goldberg had found James Moody, a relatively unknown Washington attorney who had been active in taxpayer rights and other conservative causes.

TRIPP GOES TO STARR

Why the rush for a new lawyer? "Because we wanted someone to get the tapes back from Behre so we could take them to Starr," says Lucianne Goldberg.

In fact, while Moody ended up getting the tapes back quickly (apparently by Monday, January 12), even that wasn't fast enough for Tripp. "Linda," says Jonah Goldberg, "was in a frenzy."

"I told her to call Starr Monday night," says Lucianne Goldberg. "She was afraid Isikoff was going to do a story and she wanted to make sure who got to Starr first . . . Neither of us wanted Starr to read about her in *Newsweek*. We wanted to be at the center of it."

But didn't her going to Starr also insure that Isikoff would have a story? "Yes, that's true, too," says Goldberg with a laugh. "We knew this would never *not* be a story for Spikey [Isikoff] once Starr had it."

"Linda called Starr's people Monday night," Goldberg continues. "And after a few minutes they asked her where she was, told her to stay there, and piled in a car and drove out to her house. She told me it was like that Charlie Chaplin movie or something with all those cops like clowns stuffed into a car coming out to see her . . . We never knew they would pounce like that."

Starr says that his staff spent that night and the next day, Tuesday, January 13, debriefing Tripp.

According to Goldberg—who was in contact with Tripp through Wednesday night, January 14—Starr's lawyers and FBI agents told Tripp that they needed more than was on her tapes to prove both the president's alleged effort to get Lewinsky to lie and Washington lawyer and Clinton friend Vernon Jordan's supposed obstruction of justice, via his help getting a job for Lewinsky. Their plan? They wanted Tripp to meet with Lewinsky and wear a wire while she walked Lewinsky through a conversation that they would script.

Getting more about Jordan on tape was crucial for Starr. Because his office had been established to investigate Whitewater, his people had already concluded that extending their jurisdiction to the Lewinsky affair required their arguing that Jordan's role with Lewinsky paralleled his suspected but unproven role in helping disgraced former

Associate Attorney General Webster Hubbell obtain lucrative consulting assignments in exchange for Hubbell's remaining silent about the Clintons and Whitewater.

On Tuesday, Goldberg or Tripp (Goldberg and Isikoff won't say who) called Isikoff and told him that Tripp had gone to Starr and that Starr was planning to do his own taping of Lewinsky. "That call knocked my breath out," says Isikoff.

On Wednesday, Isikoff got a full report from Goldberg (according to both) and prepared to confront Starr's office the next day with what he knew.

THE STING

Later that night, says Goldberg, Tripp told her that "Starr's people were shutting her down . . . she was being moved and her phone number was being changed and all that."

Isikoff says that when he talked to Starr deputy Jackie Bennett, Jr., on Thursday, Bennett begged him to wait until Friday before trying to call Jordan, the White House, or Lewinsky about his story. Why? Because Starr was not only going to confront Lewinsky with the new tape his team had just recorded of her and Tripp as they met in a dining room at the Ritz-Carlton, Pentagon City (in Arlington); they were also going to try to get Lewinsky to wire herself and get Jordan and maybe even the president on tape obstructing justice. Isikoff says he agreed to hold off in exchange for getting a full report on how the stings had gone. Bennett refuses to comment on any discussion he had with Isikoff, except to say that "what Isikoff knew put us in a difficult position."

Also on Thursday, Starr's deputies met in the afternoon with Deputy Attorney General Eric Holder to request that Attorney General Janet Reno expand Starr's authority beyond Whitewater to include charges of an attempt to cover up Lewinsky's affair with the president. Again, their hook to Whitewater was Jordan's supposed role, a role that was murky at best on the original Tripp tapes.

Now, according to Bennett and to a Justice Department official, the Starr people talked about their own tapes of Tripp and Lewinsky, though no tapes were played at the meeting with Holder.

According to the Justice Department source, while Starr deputy Bennett made much of Jordan's job hunt for Lewinsky, he failed to mention what he knew from the earlier Tripp tapes—that Jordan had begun offering that help at least a month before Lewinsky was subpoenaed in the Jones case. Bennett says he does not remember "if I mentioned that."

Bennett does confirm that he mentioned repeatedly that Newsweek was working on an article that would be public by Sunday. "This was meant as a way of explaining why we had to act fast," says a Justice Department participant. "But the way he said it and kept saying it, it also was clear to us that if we turned down the request, Newsweek would know about that, too. We had no choice."

Another reason that Reno was in a bind was that under the independent counsel law, Starr could have appealed a turndown to the mostly conservative three-judge panel that had appointed him in the first place. That probably would have meant that Starr would have gotten his jurisdiction after all, while Reno got a story in Newsweek saying she had rejected it.

On Friday afternoon, January 16, Reno approved the expansion of Starr's jurisdiction.

Also on Friday, Tripp met again with Lewinsky at the Ritz-Carlton in Arlington, where FBI agents and Starr deputies descended on the former intern. They stayed with her until late that night trying to get her—and later, her and her lawyer, William

Ginsburg (who was conferring with them by telephone)—to agree to help them get Jordan and the president on tape in exchange for immunizing her from a perjury prosecution for having sworn in an affidavit in the Jones case that she and Clinton had not had a sexual relationship. No agreement was reached.

STARR BEGS NEWSWEEK

That snag in dealing with Lewinsky forced Starr's people to bet Isikoff to hold off until Saturday before trying to call anyone whom his story would implicate. Any call by Isikoff to the White House or to Jordan asking about the former intern would kill any chance of Jordan or the president being stung by her. "You want to report what you know," Isikoff says. "But you don't want to influence what happens." Isikoff agreed to wait until Saturday (his deadline was Saturday evening), but admits, "This was making me crazy. How was I gonna reach Jordan on a Saturday?"

It was also not clear on Friday that Newsweek was going to run any story at all. "New York was sounding like they thought this wasn't enough," says Isikoff, referring to Newsweek New York-based top editors.

"Friday night, Spike called and told me there was some problems," Goldberg recalls. "But he said it looked like they would do with it."

Soon after that call, Isikoff finally hears some of the original tapes. According to Lucianne and Jonah Goldberg and one source at Newsweek in a position to know, at 12:30 a.m. on Saturday, Tripp's new lawyer, Moody, showed up at the Newsweek offices with two tapes that he had selected because, he told the Newsweek staffers, they most pertained to Jordan and a possible cover-up.

"I had to fight with Moody until the last minute to let Newsweek hear those tapes," says Goldberg. "He just didn't get it," Moody says he "never played any tapes for Newsweek," but declined to comment on the account by the Goldbergs or the Newsweek source that he made the tapes available for them to play.

Lucianne Goldberg says that at her direction, Moody selected the tapes that would most implicate Jordan and the president in obstructing justice, because they contained the non-sex material that Isikoff said he needed to publish a story.

Isikoff, along with Washington bureau chief Ann McDaniel, deputy bureau chief Evan Thomas, and investigative correspondent Daniel Klaidman, listened for four hours as Lewinsky talked and cried and complained about a man whom she called names like "the big creep," but who she clearly meant was the president. The sexual talk was explicit, and it did not seem contrived.

"We were all pretty convinced," says Thomas. "Within five or ten minutes it was clear to everybody that this was compelling stuff."

Nonetheless, Isikoff concedes that the material they had hoped for about Jordan or the president being complicit in an obstruction of justice just wasn't there.

"What we didn't have here was Monica saying, 'Clinton told me to lie,'" says Isikoff. "In fact there is one passage where Linda, knowing the tape is going, says, 'He knows you're going to lie; you've told him, haven't you?' She seems like she's trying to get Monica to say it. But Monica says no." That, concludes Isikoff, "made New York real queasy when we told them."

Unknown to Isikoff, while he was listening to the tapes, Tripp had been released by Starr's investigators so that she could go home. Waiting for her there were Jones's lawyers—who were scheduled to question President Clinton the next morning in a deposition. Starr would later tell me that he did

not know why she was released from her extensive debriefing at that particular time.

Thus, the president's criminal inquisitors, having just finished with Tripp, had now made it possible for his civil case opponents to be given ammunition with which to question the president in his sworn testimony—from which Starr, in turn, might then be able to extract evidence of criminal perjury.

And we now know that the next morning President Clinton was questioned as closely about Monica Lewinsky as he was about Paula Jones.

On Saturday morning, Klaidman of Newsweek found out that Starr had gotten authorization from the Justice Department to expand his investigation to include Lewinsky. "That tipped me off the fence," says deputy Washington bureau chief Thomas. "Just that was a story."

Isikoff, Thomas, and Klaidman were now pushing New York to publish. Meantime, Starr's people again begged Isikoff to hold off, but for a few hours, then for another week.

"What followed," says Isikoff, "was an incredible seven-hour dialogue. It went back and forth. I couldn't believe we were still debating this when I've got to try to reach Vernon Jordan."

"SPIKED"

At about 5:00 p.m. Newsweek chairman and editor in chief Richard Smith decided to hold the story. Smith's decision, he says, was based on three factors: an uneasiness with what they had heard and not heard about Jordan on the tapes, their inability to question Lewinsky directly, and an inclination to take Starr up on his offer of waiting and not impeding the investigation while also getting a better story. "Hell, it's not like this was the Bay of Pigs," says Isikoff, who argued against delay. "We don't have any obligation to work with the government. This was as much a story about Starr as anything else. And we knew that part cold."

"We talked about just doing an item on the expanded investigation [without naming Lewinsky], but we thought we knew too much for that," says Smith. "It wouldn't have been leveling with our readers."

Goldberg says that she learned from Isikoff at about 6:00 that the story was killed. At 1:11 A.M. on Sunday, Internet gossip columnist Matt Drudge (who the prior summer had spilled the beans on his website when Isikoff's Willey story had been delayed) sent out a bulletin: Newsweek had spiked an Isikoff story about a presidential affairs with an intern.

Drudge's report made Lewinsky radioactive. She could no longer be used to sting Jordan or the president, and the immunity negotiations here lawyer was having that night with Starr abruptly ended.

Who leaked to Drudge? Although Lucianne Goldberg concedes readily that she took a call from Drudge that night and confirmed everything that Drudge knew, she adamantly denies being his original source and offers an elaborate recitation of the circumstance and time of her conversation with Drudge that evening.

"Besides," she adds, "what Drudge reported wasn't really complete; there was nothing about the sting."

Which is true, but it's also a giveaway, because if fact Goldberg had no way of knowing about the planned sting of the president and Jordan, which means that she seems a likely source. Asked about that, Goldberg laughs and says, "I'm sticking to my story."

As for Drudge, he supplied a similarly detailed explanation of why his source was not Goldberg.

"It would make sense for my mom to have talked to Drudge," says Jonah Goldberg.

"She really was mad that Newsweek was killing it and she didn't believe [Newsweek] would print it the next week. So, she may . . . be afraid to admit it because the leak seemed to blow up in Starr's face even though she had not way of knowing that at the time."

Actually, the leak did work for Linda Tripp and the Goldbergs. For it assured that the Newsweek story would be anything but buried.

SUNDAY GOSSIP

At 10:30 Sunday morning, William Kristol, the editor and publisher of the conservative Weekly Standard (and Dan Quayle's former chief of staff), who is a regular panelist on ABC's Sunday morning show *This Week* with Sam Donaldson & Cokie Roberts, became the first person to mention the intern scandal on any outlet beyond Drudge. Toward the end of the program, Kristol said: "The story in Washington this morning is that *Newsweek* magazine was going to go with a big story based on tape-recorded conversations, which [involve] a woman who was a summer intern at the White House."

Former Clinton aide George Stephanopoulos, also an ABC pundit, interrupted and said, "And Bill, where did it come from—the Drudge Report?"

As Kristol began to answer, Sam Donaldson jumped in, with what would turn out to be one of the rare moments in the whole intern affair of a TV reporter exercising good on-air instincts: "I'm not an apologist for *Newsweek*," Donaldson said, drowning out Kristol with his trademark voice, "but if their editors decided they didn't have it cold enough to go with, I don't think we can here."

"I hadn't heard anything about Drudge or anything else about this story," Donaldson would later recall. "I just decided we shouldn't go on our air with a story that *Newsweek* had decided it couldn't go with."

But the story had now moved far beyond Drudge, and the race was on to get there first.

The principal contestants were Jackie Judd, a general assignment correspondent for ABC, and Susan Schmidt of the *Washington Post*, with *Time* and the *Los Angeles Times* also in the hunt. What Judd and Schmidt had in common with Isikoff was that they had been covering Whitewater—and Ken Starr and his deputies—for years, when almost everyone else was ignoring that beat. Schmidt recalls that the previous Friday she had "heard from sources in Starr's office something about Vernon Jordan and coaching a witness." The Drudge item, she says, gave her "more direction."

"By Tuesday mid-day, Sue Schmidt came to me with an outline of the story," recalls Washington Post executive editor Leonard Downie. "We still waited late into the afternoon and evening," he adds. "It wasn't anything we were missing as much as what would make us feel better. We have a high threshold on private lives around here."

Downie and the Post's top editors stayed through the evening, missing the deadline for the paper's first edition at about 9:00 because they still weren't comfortable. Then, says Downie, Peter Baker, Schmidt's reporting partner on this beat, "reached the wonderful Mr. Ginsburg, who gave us an on-the-record quote about the investigation, including the classic quote about the president either being a misogynist or Starr having ravaged Monica's life."

The article finally ran in the second edition, using the words "sources" or "sources" 11 times.

Citing "sources" who could only be people in Starr's office, the article's fifth paragraph said that Lewinsky can be heard on Tripp's

tapes describing "Clinton and Jordan directing her to testify falsely."

That is exactly the material that had been missing from the tapes that Newsweek heard, which, in part, had caused the magazine to hold its story, as Isikoff concedes. And, remember, Tripp's lawyer had selected what he said were the most incriminating tapes for Newsweek to hear that night.

Which means that this damning material was either on the new tapes that Tripp had just made of Lewinsky for Starr the prior week, or it is the Starr side's extreme spin on the tapes Newsweek heard.

This is not a minor point: The charge that Lewinsky had been instructed to lie was not only the linchpin of Starr's expanded jurisdiction, but would also be the nub of any impeachment action against the president—and the premise of all of the front-page stories and hours of talk show dialogue that would follow that speculated about impeachment. That such charges would stem secondhand—from one person's talking on a tape about what other people had said to her—is weak enough. Weaker still is that the only tapes heard by any reporters clearly didn't say that. In fact, they seemed to say just the opposite. The tapes, if any, that do have Lewinsky claiming she had been told to lie were based on a script provided by prosecutors and not heard by any independent party to verify if Lewinsky had said so, or if she was led too far into saying it.

HAVE THAT SCOTCH

Lanny Davis, then a White House counsel in charge of dealing with press inquiries related to the various investigations of the president, recalls that at about 9:00 that Tuesday night, January 20, he returned a call to the White House from Peter Baker of the Post: "I told him he was interrupting a good scotch. He said 'You're gonna need that scotch.' Then he laid it all out for me. It was breathtaking."

Davis drove back to the White House, where he and other top aides assembled in White House Counsel Charles Ruff's office and waited for a messenger to bring then the Post from its loading dock a few blocks away. By the time the Post came out on its website at 12:30 A.M., "all hell broke loose on my pager," Davis recalls. "It was surreal. Everyone was calling, and meanwhile Clinton is right below us in the Oval [Office] with [Israeli Prime Minister Benjamin] Netanyahu."

Over at ABC, Jackie Judd's story was ready for the 11:30 P.M. Nightline broadcast, which meant she would have beaten the Post. But Nightline host Ted Koppel, who was in Cuba doing a special on the Pope's visit, decided to hold it rather than shoehorn it in at the last minute.

Later that night, Judd managed to get the story onto the ABC radio network (as well as its overnight television news show and its website) and then led with it on Good Morning America the next morning—which is what caused Lucianne Goldberg to whoop into the phone on January 21.

From that point, says Bob Woodward, the Washington Post reporter who teamed up with Carl Bernstein in Watergate, there was "a frenzy unlike anything you ever saw in Watergate. . . . We need to remember that for the first eight or nine months of Watergate, there were only six reporters working on it full time."

What follows is a log of the first—and most furious—three weeks of that frenzy. It should be read with one often-overlooked reality in mind: All of it—every bulletin, every hour of talk radio, every segment of cable news specials, every Jay Leno joke, every website page, every Congressional pronouncement—would be based on a woman

looking for a book deal who had surreptitiously taped some of her conversations with a 23-year-old "friend" whom none of the reporters or pundits had talked to.

Day 1: Wednesday 1/21/98

THE SPECULATORS:

Jackie Judd's 7:00 A.M. Good Morning America report is a bombshell. Citing "a source," Judd says Lewinsky can be heard on a tape claiming the president told her to deny an affair and that Jordan "instructed her to lie." Again, those can't be the tapes Tripp made on her own, because Newsweek would have heard that.

Switching to the pundits, ABC's Stephanopoulos, the former Clinton aide, seconds a notion brought up five minutes earlier by Sam Donaldson, saying: "There's no question that . . . if [the allegations] are true . . . it could lead to impeachment proceedings." It has taken less than 70 minutes from the breaking of the story of an intern talking on the phone for the discussion to escalate to talk of impeachment.

At 7:30, the show's newscaster says that "two sources" have told ABC's Jackie Judd that both Jordan and the president "instructed her to lie under oath." Asked later what happened in that half hour to double her sources, Judd says, "I think I was trying to be extra-careful the first time. We actually had a lot of sources."

VISIT TO A MUSEUM, THEN PAYBACK TIME

For The New York Times, the intern story began the way Watergate had: The Washington Post had caught the Paper of Record asleep.

"Drudge was just not something on our radar screens," one Times Washington reporter recalls. And while some in the bureau had noticed Kristol's comment on *This Week*, they hadn't paid much attention to it, much less allowed it to mar the three-day Martin Luther King Day weekend.

Worse, when the Times people awoke on Wednesday and saw the front-page Post story or caught the news on Good Morning America, there was little they could do to get an early start on catching up. The office had arranged a special tour of a new exhibit of old Times front pages at Washington's Corcoran Gallery of Art, and two reporters would later recall that there was pressure on them to turn out in good numbers. So until about 10:00 that morning, most of the Time's talent was on a museum tour.

Not Jeff Gerth. He skipped the tour.

In terms of being a sleuth, Gerth is more Isikoff than Isikoff. Now 53, he has covered everything from organized crime, to global business regulation, to campaign finance, to food safety in his 21 years at the Times. And in 1992, he had broken the first Whitewater story.

Now, recalls another Times reporter, Gerth got "hold of his Ken Starr people and played a real guilt trip on them. They'd just made him look bad and he was Mr. Whitewater." (Gerth now refuses to comment on his sources, except to say that "you can imply what you want, but I always have multiple sources." He adds: "I didn't feel bad about missing this because I was never interested in touching the sex stories.")

Getting leaks from law enforcement officials—especially information about prospective or actual grand jury proceedings, where the leaks are illegal—is usually a cat-and-mouse process. The prosecutors know they are doing something wrong, and they worry about whom they can trust. You run a guess by someone. They answer vaguely but encouragingly. You push a little bit more, and they let on a bit more. Then you try someone else, again stretching what you think you know with a guess or two to see if that

person will confirm your suspicion by saying something like, "You're not far off." Then you go back to the first person for confirmation. It's almost never as easy as it seems when a story is published or broadcast that says, "sources say."

But this morning, while he did not, he later asserted, simply call one "magic phone number" and get it all, Gerth had an easier, faster time of it. "By about midday, Jeff had a memo that was about as comprehensive as you could imagine, which he kept supplementing," recalls Michael Oreskes, the Times' Washington bureau chief. Gerth freely shared his memo with everyone in the office.

ALL MONICA ALL THE TIME

At 6:00 p.m. the MSNBC Internet news service, which beginning at 11:00 a.m. had headlined the Lewinsky story "A Presidential Denial," is now calling it "Crisis at the Top," with the sub-headline "Sex allegations threaten to consume White House." Meantime, MSNBC's sister cable-TV channel is talking about the intern allegations almost nonstop. For the next 100 days, the fledgling cable channel would become virtually all Monica, all the time.

NEWSWEEK GOES ON-LINE

The Post and ABC stories (plus a front-pager in the Los Angeles Times that has almost as much information as the Post) have now made a joke out of the idea that Isikoff's story can hold until next week. So, at about 7:00 p.m., Newsweek goes on-line.

Isikoff's furiously typed story loads up everything he knows. What's notable is that he now doesn't mention what he later says was a key exchange on the tapes he heard, the question-and-answer that had caused his editors to hold the story: the fact that on those tapes Lewinsky answer, "No," when Tripp asks, "He [the president] knows you're going to lie. You've told him, haven't you?"

LIVE FROM HAVANA

Each of the three broadcast network news anchors is live in Havana for the Pope's visit, but the headline for each show is Lewinsky—and the heart of all three reports features a correspondent who, citing anonymous sources, has clearly been given extensive information by Starr's office.

STARR AND LEAKS

On April 15, during a 90-minute interview with Starr, I am reminded of the kind of old-world straight arrow that he is. Starr is the opposite of slick—which in this case means he doesn't lie when asked a straight, if unexpected, question. After he expresses disappointment with my insistence that our conversation not be off the record or on background, I ask a series of question not about his investigation, but about discussions he or his deputies might have had with reporters. I make clear that these questions are based not only on the obvious fact that many of the stories about the investigation seem to have only been able to have come from his office, but also on what reporters or editors at six different news organizations have told me and, in three cases, on documents I have seen naming his office as a source for their reporting about the Lewinsky allegations.

Details of his answers are reported below. As a general matter, in response to an opening "Have you ever . . . ?" question, Starr hesitates, then acknowledges that he has often talked to various reporters without allowing his name to be used and that his prime deputy, Jackie Bennett, Jr., has been actively involved in "briefing" reporters, especially after the Lewinsky story broke. "I have talked with reporters on background on some occasions," he says, "but Jackie has been the primary person involved in that. He

has spent much of his time talking to individual reporters."

Starr maintains that there was "nothing improper" about him and his deputies speaking with reporters "because we never discussed grand jury proceedings."

If there was nothing improper, why hadn't he or Bennett ever been quoted by name on the record?

"You'd have to ask Jackie," Starr replies. Aren't these apparent leaks violations of the federal law, commonly referred to as "rule 6-E," that prohibits prosecutors from revealing grand jury information?

"Well, it is definitely not grand jury information, if you are talking about what witnesses tell FBI agents or us before they testify before the grand jury or about related matters," he replies. "So, it's not 6-E."

In fact, there are court decisions, (including one in early May from the Washington, D.C., federal appeals court with jurisdiction over this Starr grand jury) that have ruled explicitly that leaking information about prospective witnesses who might testify at a grand jury, or about expected testimony, or about negotiations regarding immunity for testimony, or about the strategy of a grand jury proceeding all fall within the criminal prohibition. And Starr himself has been quoted on at least one occasion saying the same thing. On February 5, during one of his sidewalk press conferences, Starr refused to comment on the Lewinsky investigation's status. He couldn't talk, he said then on camera, "about the status of someone who might be a witness [because] that goes to the heart of the grand jury process."

Moreover, whether or not the criminal law applies to these discussions between reporters and Starr and his deputies, it is clearly a violation of both Justice Department prosecutorial guidelines and the bar's ethical code for prosecutors to leak substantive information about pending investigation to the press.

What about that? I ask Starr. Was he conceding unethical but not illegal leaks?

Perhaps realizing that he has already conceded too much, Starr reverts to a rationalization so stunning that two days later I called his just-hired spokesman, Charles Bakaly, who sat in on much of the Starr interview, to make sure I heard it correctly. (Bakaly said that I had.)

"That would be true," Starr says, "except in the case of a situation where what we are doing is countering misinformation that is being spread about our investigation in order to discredit our office and our dedicated career prosecutors. . . . I think it is our obligation to counter that kind of misinformation. . . . and it is our obligation to engender public confidence in the work of this office. We have a duty to promote confidence in the work of this office."

In other words, Starr is claiming a free pass. For even assuming that his leaks are not illegal under 6-E—which, again, is a huge assumption—he's saying that they are not unethical either, because they are aimed at negating attacks and promoting confidence in the work of his office. Which, of course, could be said about any leak from any prosecutor that attempts to show that an investigation is making progress in going after the bad guys.

Asked two days after the Starr interview about this apparent loophole in the ethical prohibitions against leaks (again, even assuming they are not illegal), Starr's deputy, Bennett, says, "It is true that Ken's view is that . . . the public has a right to know about our work—to the extent that it does not violate legal requirements."

As for why, if all of this is proper, Starr or he had not been quoted by name on the record countering all this misinformation,

Bennett says, "I think I have been quoted on occasion."

NEXIS check of all stories by major newspapers, magazines, and network news organizations concerning the first month of the Lewinsky story did not turn up any examples of Bennett being quoted by name talking about the progress or particulars of the investigation.

As for the comprehensive network reports about the Lewinsky investigation aired on the first night the story broke, Starr confirms in our interview that Bennett had spent "much of the day briefing the press." But he asserts again that Bennett had done nothing improper because his efforts were directed at countering the impression that Starr's office had improperly exceeded its jurisdiction or had mistreated Lewinsky. In none of these reports is Bennett quoted by name.

Asked if he had spoken to the network correspondents, or to Schmidt of the Post, or to Gerth of the Times, Bennett said, "Ken has said what he said . . . but I am not going to answer any questions about any particular conversations I had with any members of the press. . . . I don't think it's any of your business."

The reporters involved declined all comment on their sources—which, of course, is what they should do if they have promised their sources anonymity.

APPLYING THE PRESSURE

There is a purpose to these January 21 leaks beyond glorifying Starr and embarrassing the president. On this day, the day that the story breaks, Starr's people are again negotiating with Lewinsky's lawyer, William Ginsburg. "The more they can make me feel like they have a strong case without me," says Ginsburg, "the more pressure they figure I'll be under. And the same I guess is true for Vernon Jordan. They want him to flip, too."

The most laughably lapdog-like work comes from NBC's David Bloom who, throughout this story, would perform as a virtual stenographer for Starr. In a report lasting about two minutes, he uses the terms "sources say" five times and "law enforcement source" twice, ending ominously with this: "One law enforcement source put it this way, quote, 'We're going to dangle an indictment in front of her [Lewinsky] and see where that gets us.'" Bloom is clearly helping Starr fulfill his duty to "engender confidence in the work of" his office.

CBS's Dan Rather and the network's chief White house correspondent, Scott Pelley, are more circumspect. Rather characterizes Clinton's comments on National Public Radio and The NewsHour with Jim Lehrer as "flat-out" denials, and he repeatedly emphasizes that none of the allegations have been proven.

At ABC, Sam Donaldson dissects what he sees as the tentativeness of the president's denials. Then, Jackie Judd, citing a "source who has heard the tapes" that Tripp made at the Ritz-Carlton under the Starr people's direction (which means at this point that only Starr's office can possibly be the source), says that Lewinsky can be heard on the tapes saying that "Jordan instructed her to lie under oath." The Starr people are clearly using one of the three reporters they know best and trust the most (the other two being Isikoff and the Post's Susan Schmidt) "to engender public confidence" in their work—and to step up the pressure on Lewinsky and Jordan.

When asked specifically about these three reporters during our interview, Starr acknowledges that his deputy, Bennett, has talked "extensively" to each. He then refers me to Bennett for details. Bennett refuses to

comment on any talks he had had with the favored three. In none of their reports is Bennett ever quoted by name.

FEEDING THE FURNACE

Twenty years ago a story of this scope would have had a chance to catch a breath after the network evening newscasts. The next round of coverage would not come until the morning papers. Now it is only after the networks' evening news that the story achieves maximum velocity. It's then that talk television gets to use it to fill its need for the news that is gold—the type that can generate ratings with inexpensive talking heads rather than expensive reporters in the field.

On CNN's Larry King Live, Evan Thomas of Newsweek leads off with his description of the Lewinsky tapes he had heard.

"Our PR department decided to do a blitz on television and get all of us out there," Thomas later explains. "It's something the newsweeklies always want to do nowadays—get mentioned and get noticed—and in this story we really wanted to be identified with it because it was our story. . . . You need to be careful about television," adds Thomas. "They try to lure you into saying more than you know, into saying something new. It's a trap, and after a few days I hated it."

Thomas tells a caller who asks how he can know the tapes are legitimate that one of the reasons that Newsweek did not run its story that weekend was that it could not authenticate the tapes. That's a new explanation, and, if sincere, it raises the question of why Newsweek went on-line today with its story; for the magazine certainly can't have authenticated the tapes since it heard them that Saturday morning because it did not get to keep copies.

Whatever these nits, King's show, which includes former Clinton aides James Carville and Dee Dee Myers as well as Ronald Reagan and George Bush press secretary Marlin Fitzwater, does provide a good, lively introduction to the story.

Geraldo Rivera, on CNBC's Rivera Live, provides quite a bit more. His guests include Paula Jones spokeswoman Susan Carpenter McMillan; William Ginsburg, who for this hour is in his "I-can't-say-anything" mode; a Newsweek editor named Jon Meacham (apparently one of Thomas's TV-blitz squad people), who had not heard the Lewinsky tapes but is on the show to talk about them anyway and does so happily; and one Dolly Browning, who has written a novel (agented by Lucianne Goldberg), which is described as a fictionalized version of her own long affair with Bill Clinton. Add three more lawyer-pundits and Rivera (who also has a law degree), and you have a kind of dinner party conversation from hell, in which any and all variety of truth, speculation, fiction, and agrinding are thrown together for the viewing public to sort out for themselves.

Over at MSNBC, we find The Big Show with Keith Olbermann, which features much the same mixture but with a more sarcastic and less intelligent host. The blitzing Newsweekier here is Howard Fineman, the magazine's chief political correspondent. According to Thomas and Isikoff, Fineman hadn't even known about the Lewinsky story until after Drudge leaked it, much less heard the tapes, a point Fineman later concedes to me.

"We have heard some of the tapes," Fineman begins, not telling his viewers how royal his use of "we" really is. After describing what everyone else by now has said is on them, he adds something new, revealing that "we" have "confirmed, apparently, the president's own voice on Monica Lewinsky's answering machine. We haven't heard that tape, but we know pretty authoritatively

that apparently the president's voice is on her tape machine. . . . If true, how idiotic of the President of the United States," Fineman declares.

Nearly for months later, as of this writing, there is no confirmation of that tape, let alone confirmation that, if there is one, it incriminates the president in anything.

"Television is definitely more loosey-goosey than print," Fineman later explains. "And I have loosened up myself, sometimes to my detriment . . . and said things that were unfair or worse. . . . It's like you're doing your first draft with no layers of editors and no rewrites and it just goes out to millions of people."

Within a week, Fineman would become a regular on-air nighttime and weekend analyst for NBC, MSNBC, and CNBC for an annual fee that he says is "in the ballpark" of \$65,000. That's about 40 percent of his day-job Newsweek salary for what he estimates to be 5 to 10 percent of the time he works for the magazine.

"We didn't let our reporters actively covering this go on television, except for Bob [Woodward], who essentially talked about Watergate," The Washington Post's Downie later says. They're supposed to be reporters, not people giving spin or expressing a point of view. And if I were running Time or Newsweek I would have the same view."

"Len and I have a different view on that," counters Newsweek editor in chief Richard Smith, who also notes that "the people on our staff who were really in the know—Isikoff, McDaniel, Thomas—were among the most sober, thoughtful voices you heard. But you can find people in our organization or any organization that, given the voracious maw that electronic journalism has become, were tempted to say more than they knew."

Another Olbermann guest is the NBC colleague Tim Russert, the NBC Washington bureau chief and Meet The Press host. "One of his best friends told me today," says Russert, referring to the president, "if this is true, he has to get out of town. . . . Whether it will come to that, I don't know, and I don't think it's right or fair to be in the speculation game."

But talk TV is the speculation game. So, after taking a breath, Russert continues: "But I do not underestimate anything happening at this point. The next 48 to 72 hours are critical."

Olbermann's MSNBC show, which runs from 8:30 to 9:00 p.m. eastern time, debuted last October. A marquee newscaster at the ESPN cable sports network, Olbermann had been lured by big bucks and the promise of aggressive promotion that would put him and MSNBC—the Microsoft-NBC joint venture challenge to CNN—on the map. Now, as his show wraps on this first night of the scandal, his procedures are already talking among themselves in the control room about using the intern scandal to birth a whole new show called White House in Crisis. That show would debut at 11:00 on February 3. And MSNBC officials would later make no bones of the fact that with that show, and with Olbermann's 8:00 p.m. show and, indeed, with the entirety of their-talk-news daytime programming, they were hell-bent on using the intern scandal to do for their entire network what the Iranian hostage crisis had done for a half-hour ABC program called Nightline in 1979.

Indeed, MSNBC's use of the alleged intern scandal was endemic to how all-24 hour cable news networks and all talk radio had come to use such topics in the late 1990s. For these talk machines, the subject matter isn't simply a question of bumping circulation a bit for a day or a week, the way it is for traditional newspapers or magazines or of boosting ratings for a part of a half-hour show or

an hour magazine program the way it is for network television. Rather it's a matter of igniting a rocket under the entire revenue structure of the enterprise.

Thus, while the three broadcast networks' evening news ratings increased a total of about six percent in the week beginning on this day (January 21), MSNBC's average rating for its entire 24-hour day—a day when almost all of its coverage was devoted to the intern scandal—increased by 131 percent. Which meant that its revenue from advertising (which is the only revenue that varies from week to week in cable television) would also jump 131 percent if it could sustain that increase.

Day 2: Thursday 1/22/98

NOT WATERGATE

The Times gets up off the mat with a comprehensive page-one report that leads with the president's denial—then details the material on the tapes. Most of the country's other newspapers use information from the Times and The Associated Press, which publishes a less complete story.

What all the stories have in common is that none is based on firsthand reporting. It is all the prosecutors' or other lawyers' ("sources") rendition of what witnesses or potential witnesses have said, are saying, or might say.

"The big difference between this and Watergate," says Bob Woodward is that in Watergate, Carl [Bernstein] and I went out and talked to people whom the prosecutors were ignoring or didn't know about. . . . In fact, that's what Watergate was all about—the government not doing its job when it came to prosecuting this case. . . . And we were able to look these people in the eye and decide if they were credible and get the nuances of what they were saying. . . . Here, the reporting is all about lawyers telling reporters what to believe and write."

TODAY FIGHTS BACK

After being bested by Jackie Judd and Good Morning America yesterday, the Today show is fighting back. One advantage the show has is NBC's contract with Newsweek's Isikoff. Plus, they have snagged Drudge. But first we hear from Tim Russert, who declares: "I believe [impeachment] proceedings will begin on the Hill if there is not clarity given by the president over the next few weeks."

Then cohost Matt Lauer peppers Drudge with questions about his journalistic standards. Then he demands, "Are you at all concerned that you've made a mistake here?"

Drudge responds by hurling another sleaze ball: "Not at all. As a matter of fact, I have reported that there's a potential DNA trail that would tie Clinton to this young woman."

What Drudge is referring to is his report on the Web the day before about a semen-stained dress—which is something Lucianne Goldberg later told me she had heard about from Tripp and had passed on to Drudge and some other reporters.

Lauer asks for more. "You say Monica Lewinsky has a piece of clothing that might have the president's semen on it," he says. "What evidence do you have of that?"

"She has bragged . . . to Mrs. Tripp, who has told this to investigators, it's my understanding," says Drudge.

Next up is Isikoff (who has already appeared in the first half hour). Lauer can't let the dress story die. He demands to know if Isikoff "has heard anything" about the dress, or if he has any confirmation of its existence. Isikoff tries to brush him off: "I have not reported that, and I am not going to report that until I have evidence that it is, in fact, true."

Lauer doesn't let go. "You're not telling me whether you've ever heard it," he persists. "I've heard lots of wild things, as I am sure you have," Isikoff replies, clearly frustrated. "But you don't go on the air and blab them."

Asked later why he had given Drudge the opportunity to air any unconfirmed rumors live on national television, let alone pressed him about the most sordid one out there, Lauer says, "Because that story was out there. People were starting to talk about it." As for why he hectored Isikoff about Drudge's dress rumor, Lauer says, "I was really just trying to get him to debunk it, not substantiate it. That's all I was doing."

In a moment rich enough an irony for a remake of the movie *Network*, Katie Couric followed Lauer's semen interviews about an hour later with a segment featuring a child psychologist explaining how to help our children "make sense" of "the Clinton sex scandal."

Meanwhile, at ABC's *Good Morning America*, the pundits, including George Stephanopoulos and Sam Donaldson, bat around all manner of rumors and leaks—including a dress about which "there are all sorts of reports on the Internet" (Donaldson), sexually explicit tapes, and the fact that the president admitted to having "an affair" with Gennifer Flowers in his Paula Jones deposition (something also mentioned on NBC). The only guest who stays on the straight and narrow is legal analyst Jeffrey Toobin.

"I do have an m.o.," Toobin explains later. "These cases really come down to facts . . . and facts tend to be in short supply at the beginning of a story like this. So I just try to emphasize the variety of options based on the factual scenarios. . . . It's more about journalism than the law, because journalism [asks] about facts. . . . The problem," Toobin continues, "is that if, for example, you engage in a . . . long discussion about the legal elements of obstruction of justice, you are presupposing that there was an obstruction of some kind. . . . A discussion about the elements of impeachment presupposes that there's some relevance to an impeachment discussion. Worst of all," he concludes, "all of the Lewinsky discussions were based on the one hundred percent certainty that they had a sexual relationship, and there is pressure in that direction because it makes the discussion interesting."

OUT OF HAVANA

The network evening newscasts have left Cuba and the Pope behind; the anchors are now reporting from Washington (NBC and CBS) or New York (ABC).

"First we heard that Brokaw was going back," recalls CBS's Dan Rather. "Then we heard Jennings was . . . clearing out . . . I truly wanted to stay there and report on the Pope, but I got the distinct impression [from his bosses in New York] that if I stayed another minute, I would have been there all alone and without a job. I might as well have just stayed here forever with Castro."

CBS'S SCOOP

For all of Rather's purported reluctance, CBS News now begins to emerge as a place for unexciting but important scoops. Tonight, White House correspondent Scott Pelley reports that the president's personal secretary has been subpoenaed to testify before the grand jury and that FBI agents had gone to her home last night. Pelley is also the first to report that Secret Service records indicate that Lewinsky visited the White House "as recently as last [December]."

'THE BIGGEST DAY IN THE CLINTON PRESIDENCY'

On the *Nightly News*, NBC White House correspondent Claire Shipman cites "mount-

ing circumstantial evidence—messenger receipts [the ones created by Lucianne Goldberg's brother's family's courier service] . . . or reports of the president's voice on the answering machine of Lewinsky."

NBC caps its report with a discussion between Tom Brokaw and Tim Russert. "Tim, tomorrow [Friday, January 23] is the biggest day of the Clinton presidency," Brokaw declares. Whereupon Russert notes that the key event of the big day—Lewinsky's scheduled deposition in the Jones case—is now likely to be postponed, which it was.

NOW, IT'S 24-48 HOURS

Russert is not consistent. Yesterday he declared that the president had 48-72 hours to give their country a complete explanation. Now on NBC's sister network, CNBC, he tells Geraldo Rivera that the president "basically has the next 24 to 48 hours to . . . talk to the country, either through a press conference or a news interview and explain exactly what happened, what kind of relationship he had."

"I was only reporting the state of mind of people at the White House," Russert later contends. "Even the president, in those first few days, said he would provide answers sooner rather than later."

BRENDAN SULLIVAN TO THE RESCUE

Over at Larry King Live, *Newsweek's* Evan Thomas has apparently forgotten his own worry about reporters trying too hard to make news on television. "We understand Brendan Sullivan"—the famed Washington lawyer who represented Oliver North, among others, and is a partner at the firm where Clinton defense lawyer David Kendall is also a partner—"is masterminding a legal team" for the president, Thomas tells King. If so, as of this writing, he has never surfaced.

"That was just wrong," Thomas concedes later. "Brendan may have an informal role," he adds. "But how are you ever gonna prove it?"

Day 3: Friday 1/23/98

GENNIFER AND MONICA

The Washington Post publishes a story headlined "Flowers Feels Vindicated By Report; Similarities Seen in Relationships." The story is based on the false leak that the president has now acknowledged an "affair" with Flowers, rather than the one encounter that it turns out the president did admit to in his deposition. (This exaggeration of what the president actually admitted to—not of what might have actually happened—will pollute most subsequent accounts of the deposition.) The paper also runs an account of the continued sparring between Starr's office and Lewinsky lawyer William Ginsburg. It's full of anonymous sources from Starr's side and the on-the-record Ginsburg on Lewinsky's side. "They leak and I patch," Ginsburg asserts later.

'OUT THERE'

The St. Louis Post-Dispatch (which is a good barometer of mainstream city newspapers outside the media hothouses of Washington, New York, and Los Angeles) leads with a story, "From News Services," that—by definition in a situation like this—vacuums up every leak and rumor about the investigation and the Lewinsky-Starr negotiations.

Bob Woodward would later say that print had done a much better job with this story than television because "it has the time to check things out and get it right." He's generally right about papers with their own national reporters, like *The Washington Post*, the *Los Angeles Times*, the *Chicago Tribune*, *USA Today*, and *The New York Times*. But today, as on most days, the other papers—which now mostly use news services and wire

reporters to disseminate national news—gobble up the confirmed and unconfirmed from everyplace else, print and television.

It is not a pretty picture.

And it's a major manifestation of the virus that will afflict this story: A rumor or poorly sourced and unconfirmed leak aired or printed in one national medium ricochets around the country until it becomes part of the national consciousness. In short, once it's "out there," it's really out there.

THE MISSOURI INTERNS

Today's Post-Distpatch rumor bazaar is supplemented by the one kind of national story that most newspapers still produce with their own reporters and with parody-like uniqueness: the classic "local angle." In this case, it's a piece headlined "Missouri, Illinois Interns Are Fully Briefed on Pitfalls of Job." It's about how interns at the two state legislatures are cautioned about being wowed by "people of influence and charisma."

INSIDE KEN STARR'S MIND

On the CBS Evening News with Dan Rather, Phil Jones reports that "two sources familiar with the independent counsel's investigation tell CBS News that Kenneth Starr is, quote, 'absolutely convinced that Monica Lewinsky was telling the truth when she was recorded by her friend Linda Tripp.'"

THE DRESS

ABC's Peter Jennings opens *World News*

Tonight with this introduction: "Today, someone with specific knowledge of what it is that Monica Lewinsky says really took place between her and the president has been talking to ABC's Jackie Judd."

Following this buildup, Judd reports: "The source says Monica Lewinsky claims she would visit the White House for sex with Mr. Clinton in the early evening or early mornings on the weekends, when certain aides who would find her presence disturbing were not at the office. According to the source, Lewinsky says she saved, apparently as some kind of souvenir, a navy blue dress with the president's semen strain on it. If true, this could provide physical evidence of what really happened."

This source could be someone who has heard the tapes. It could even be Linda Tripp. But it's not. Although Judd would not comment on her source, Lucianne Goldberg told me that she herself is the source for this Jackie Judd report and for others that would follow. And she claims she heard all this from Linda Tripp, but is not sure that any of it is on a tape. (The *Newsweek* people who heard the tapes say it is not on what they heard.) In fact, Goldberg is not sure that Tripp said Lewinsky had talked about having saved a dress, as opposed to a dress simply having been stained. "I might have added the part about it being saved," Goldberg told me.

We can assume that Goldberg is telling the truth that she's the source because of what Judd reports next:

"ABC News has obtained documents that confirm that Lewinsky made efforts to stay in contact with the president after she left the White House. . . . These are bills, "she continues, holding some papers up to the camera, "from a courier service which Lewinsky used at least seven times between October 7 and December 8."

Yes, the courier service—the one owned by Goldberg's brother's family. How else but from Goldberg could Judd have obtained those handy records?

STOP US BEFORE WE KILL AGAIN

Every two or three days throughout the reporting of this alleged scandal, the press seems to stop, take a breath, and flaccidly itself, as if to say to its audience, "Stop us -

before we kill again." Much of it, including a piece by ABC's Cynthia McFadden and a special on CNN moderated by Jeff Greenfield, would be quite good. Much of it would be quite the opposite.

For example, minutes after Judd's scoop, Jennings introduces Tom Rosensteil of the Pew Charitable Trusts' Project for Excellence in Journalism.

Jennings: "How do you think the media is doing, Tom?"

Rosensteil: "So much of what we have seen in the last three days is speculation, rumor, innuendo."

Jennings: "Let me say . . . that I think the press has been pretty good on saying repeatedly these are allegations. Would you have us ignore them?"

Rosensteil: "No. . . . But we have reporters go on and characterize secondhand what is on the tapes. . . . We've had reporters go on and say that the president has 48 hours to . . . put the scandal behind him."

Jennings: "Okay, Tom Rosensteil, thanks very much. Critical of the press. Part of his job."

A WEAKNESS FOR 24-YEAR-OLDS

Olderman's Big Show at 8:00 features a guest who says, "Maybe if he stood . . . up there and said, 'I'm sorry. I have a weakness for 24-year-olds,' he might . . . survive it."

The expert: Watergate ex-con John Ehrlichman.

FOUR OTHER INTERNS

Geraldo Rivera hosts the usual melange, who trade all variety of wild theories. He calls them his "cast," and they include Jennifer Flowers, Paula Jones's lawyer, and some other lawyers, one of whom is Ann Coulter, a Rivera regular described as a conservative "constitutional law attorney." Asked by Rivera if she thinks it is "sleazy" that Lewinsky had been questioned for "eight to nine hours without an attorney present," Coulter counters matter-of-factly that it is not as bad as "the President of the United States using her to service him, along with four other interns."

What's curious about the Rivera show is the way it uses its NBC bloodline to combine this kind of rollicking garbage with the more serious contributions of the network's newscasters. Mixed in with the screaming and smearing from Coulter and the others are live reports from White House correspondent Shipman and even taped bites from Tom Brokaw.

It's a fascinating display of corporate synergy. Or perhaps it is a suicidal, long-term cheapening of a great brand name. True, the high-low mix helps ratings short-term; but if your business plan as a media organization is to be a cut above Drudge—and it has to be, because anyone can be Drudge—how can this be a good long-term business strategy?

Asked later if she minded being sandwiched in that night between Rivera, talking about the president's "alleged peccadilloes," and Coulter, talking about those "four other interns," Shipman says, "It's true that you get a different style on NBC with Brokaw than with Olbermann or Geraldo, but I think Geraldo does a pretty good job of separating out the rumor from the fact. He's very smart and I am not at all uncomfortable with his role at NBC."

Do the NBC and Brokaw brand names get hurt by mixing them with Geraldo? "Geraldo does what he does," Brokaw says. "He doesn't arrive in the guise of someone who is going to be a traditional mainstream reporter. . . . And the public is very good at telling the difference. They have a good filter on this stuff."

"In the case of Claire or Tom, they're being reporters on Nightly News and being reporters on Geraldo," says NBC News presi-

dent Andrew Lack later. "The shows have different flavors, but as long as they don't change their acts, I'm not concerned."

Day 4: Saturday 1/24/98

THE SOUVENIR DRESS

The Lucianne Goldberg-Jackie Judd semen dress story is spreading. The front page of the New York Post blares, "Monica's Love Dress," with the declarative subhead "Exintern Kept Gown as Souvenir of Affair." The story quotes "sources."

"She Kept Dress," echoes the Daily News. Some papers across the country also ran a United Press International wire service story, sent out the night before, saying that ABC has quoted an unnamed source saying, "Lewinsky saved a navy blue dress stained with President Clinton's semen." So now we have a source not saying that that is what Lewinsky says, but just plain stating it.

LEWINSKY NOT 'SQUEEZED'

Schmidt of The Washington Post does stonography for the prosecutors. Citing "sources close to Starr," she writes that Lewinsky's ten-hour session in Arlington with Starr's deputies and the FBI wasn't really a harrowing encounter, after all. It only took that long, Schmidt writes, because Lewinsky let it drag on.

This kind of leak from Starr's shop clearly falls under the category of what Starr later contends were "attempts by us to counter the spread of misinformation."

In fact, in our interview he even cites "correcting allegations about our mode of interrogating a particular witness" as an example of the kind of press briefing Bennett had undertaken. But as an attempt to affect public perception—and a potential jury's perception—it is also a clear violation of Justice Department guidelines and the lawyer's code of professional responsibility.

RESIGNATION

At 6:00 p.m. on this Saturday evening, CNN breaks into its regular programming with a bulletin. Wolf Blitzer, standing on the White House lawn, says, "Despite the president's public and carefully phrased public denials, several of his closest friends, and advisers, both in and out of the government, now tell CNN that they believe he almost certainly did have a sexual relation[ship] with . . . Lewinsky, and they're talking among themselves about the possibility of a resignation . . ." Mark this moment—about 6:00 p.m. on Saturday, January 24—as the height of the frenzy.

"Every one of us senior advisers is sitting there . . . in the White House having a meeting to prepare to go on the Sunday talk shows," Clinton aide Paul Begala later recalls, "and we heard Wolf outside saying we were talking about resignation . . . It was pure bullshit. And we all went out there and yelled at him."

But Blitzer had been careful to say he was referring to Clinton friends, in and out of the government, not just to the White House group Begala is talking about. And with all the media tornadoes swirling about concerning other women, a smoking gun—semen dress, and the like, it should have been no surprise that some of the president's friends, especially those outside the immediate White House group working on fighting the storm, would at least "talk about" resignation.

THE 'COME-HITHER LOOK'

Just after the Biltzer resignation-talk story, CNN produces a 10- or 12-second video clip from its archives that shows the president embracing Lewinsky. She is in a crowd at a White House lawn reception. It's the first picture of the two of them together, and it will be aired hundreds of times in the weeks to follow, usually in slow motion.

"I thought that showing it once was okay, but that after that we should have shown it in context," CNN/US president Richard Kaplan says later. "Clinton always embraces people and he must have embraced a hundred people just that way at that event . . . I told our people to show it in context."

So how come we still have only seen this isolated embrace? I ask Kaplan two months after it was first aired, "I don't know," he says. "I told them not to do it. I just don't know."

Tomorrow, in its new issues, Newsweek will make even more of the picture. Evan Thomas will pen an article that tells readers to "look closely at those video clips. There is a flirty girl in a beret, gazing a little too adoringly at the president—who in turn gives her a hug that is just a bit too familiar."

"What Newsweek wrote was just bullshit," Kaplan asserts. "There's nothing special about the embrace."

"Any criticism of that is completely full of shit," counters Thomas. "All over Washington you could just feel people reacting to that picture. She had that come-hither look."

RATINGS HEAVEN

According to MSNBC communications director Maria Battaglia, the fledgling cable network scores its highest ever full-day rating (outside of its Princess Diana coverage) today. By her estimate, "ninety-five percent of our coverage was the scandal." The stars are Newsweek pundits Isikoff and Jonathan Alter, who has a contract with NBC and its cable networks to produce pieces and provide commentary.

Day 5: Sunday 1/25/98

'SPECIAL ASSISTANT TO THE PRESIDENT FOR B-- J--'???

At 6:00 a.m., Time magazine director of public affairs Diana Pearson reports for work. Pearson, who had recently been lured away from Newsweek, is one of a new breed of in-house magazine marketing people. Her job: to get Time mentioned. Her main tool: the press release she finishes at dawn every Sunday morning that touts the issue that went to press late the night before. She then faxes it to newspapers and television networks, making sure that it reaches the TV people in time to be talked about on the Sunday shows.

This morning she is working with what Time managing editor Walter Isaacson later tells me "is our crash effort to catch up to Newsweek."

She reads through Time's piece and decides, as she later puts it, that "the most catchy item, and one thing we had that seemed to be new," is an unsourced claim buried in Time's exhaustive report, in which Lewinsky reportedly told Tripp that if she ever moved back to the White House from the Pentagon, she would be "Special Assistant to the President for blow jobs." So, she makes it the headline of her press release.

"I have never seen this," Isaacson says when asked about this press release five weeks later. "But I have heard about it, and can tell you that that should not have been the headline. . . . We've now taken careful steps," he adds, "to make sure that all press releases are cleared by a top editorial person."

Five weeks after she penned the release, Pearson says that "in retrospect it probably wasn't representative of the story." She also says that "there has been no change in the press release procedure. No one sees them after I do them Sunday morning."

EXHAUSTIVE, BUT . . .

Time's package of stories is, indeed, not well represented by that tawdry press release. Fabulously written, particularly the

main story by senior editor Nancy Gibbs, it raises questions from all sides and touches all bases—from Ken Starr's tactics, to Vernon Jordan's role, to Lewinsky's bio, to Linda Tripp's motives, to the relevant legal issues. It is all done in a better, more understandable form than any other publication, including, ironically, Newsweek, which still has so much to report from the tapes that its package seems overwhelmed and disorganized.

"You can cover a lot of sins and reporting gaps with Nancy Gibbs," Time Inc. editor in chief Norman Pearlstine explains later.

"A role of a newsweekly," continues Pearlstine, in what many of his more aggressive reporters would view as an obvious rationalization, "usually can't be to make news the way Newsweek did. . . . The more traditional role is that of synthesis, analysis, and writing. And for that I'll take a Nancy Gibbs over any investigative reporter in America. . . . Remember," he adds, "that in the beginning [Time founder] Henry Luce didn't even think we needed reporters, just writers who could synthesize what others were reporting . . . which for this story in particular is what I think readers really needed."

True enough. But one could argue that, instead of a filter, Time applied a shovel to reporting what was "out there" already.

About five weeks after the issue appeared, I asked Pearlstine to read the following lines of Gibbs's story:

"Monica Lewinsky's story was so tawdry, and so devastating, it was hard to know which was harder to believe: that she would make up such a story, or that it actually might have happened. Without proof, both possibilities were left to squirm side by side. . . . As each new tape surfaced, each new detail arose, of Secret Service logs showing late-night visits when Hillary was out of town; of presents sent by courier; of a dark dress saved as a souvenir, spattered with the president's DNA, the American public began stripping Bill Clinton of the benefit of the doubt."

Didn't that last sentence, for all its opening qualifiers, simply throw in a whole bunch of unproved allegations unfairly? I asked Pearlstine. "Yes, I do have a problem with it. It seems to have just taken everything out there and treated it as fact," he said, through he added that he wanted to confer with those who had worked on the story and get back to me.

Three days later, Pearlstine sent a letter attaching a longer letter from Time managing editor Walter Isaacson defending the paragraphs. Pearlstine said the Isaacson letter made him more comfortable than he had been when he spoke. Isaacson's letter, citing the qualifiers that preceded that final sentence, argued that "even in hindsight, I do not think we could have stated more clearly that these allegations which were . . . widely reported but also confirmed to us by investigators . . . were not proven and were part of a murky tale."

Of course what was "confirmed by us" were only the unsourced allegations by investigators. But Isaacson is right: The real problem is the swirling allegations and rumors, not Time's performance in summarizing them. And Isaacson's qualifiers in talking about them were a lot stronger than most.

SOFTENING STARR'S IMAGE

Susan Schmidt of The Washington Post begins this Sunday with another softening of Ken Starr's image. "[A] source close to the prosecutor insisted he never intended to eavesdrop on Jordan or Clinton," Schmidt reports.

ANGUISHED LINDA

On the Sunday Today show, Isikoff—now openly engaged in punditry and touting how

"genuine" the taped conversations seem with a certainty that he would never be allowed to assert in print—refers to an anguished Monica Lewinsky being heard on Newsweek's newly released tape excerpts, along with "a similarly anguished Linda Tripp."

'IT'S 50-50 AT BEST'

Next up on the Sunday Today show is Tim Russert, who takes time out from preparing for Meet The Press to tell host Jack Ford that "one [friend] described [President Clinton] as near Houdini-like in his ability to escape these kind of scandals and crises. But they realize that it's 50-50 at best."

MEET THE DRUDGE

On his own show, Russert announces that among his Meet The Press guests is Matt Drudge.

Drudge seizes his moment. When Russert asks about reports on the tapes of the president and other women, Drudge declares, "There is talk all over this town [that] another White House staffer is going to come out from behind the curtains this week. . . . [T]here are hundreds—hundreds, according to Miss Lewinsky, quoting Clinton." At a later point, Drudge adds that if the Clinton side keeps denying the charges, "this upcoming week is going to be one of the worst weeks in the history of this country."

"Our Round Table is an op-ed page," Russert explains later. "And Matt Drudge was a big player—the big player—in breaking this story. . . . We can pretend that the seven to ten million Americans who were logging on to him don't have the right to see him, but I don't agree."

THE WITNESS

On ABC's This Week with Sam Donaldson—Cokie Roberts (where the alleged scandal got its first airing a week ago), ABC's Jackie Judd has what Cokie Roberts announces are "new revelations in the alleged affair."

Judd then declares: "ABC News has learned that Ken Starr's investigation has moved well beyond Monica Lewinsky's claims and taped conversations that she had an affair with President Clinton. Several sources have told us that in the spring of 1996, the president and Lewinsky were caught in an intimate encounter in a private area of the White House. It is not clear whether the witnesses were Secret Service agents or White House staff."

There are four things you need to know about that paragraph:

1. This report surfaces at the time that Starr's people are putting the most pressure on Ginsburg and his client to have Lewinsky testify that she had an affair with the president and that he pressured her to lie about it. "With leaks like that, they were just trying to scare me into thinking they had a smoking gun and didn't need Monica," Ginsburg asserts later. As if to make sure that the point isn't lost on Ginsburg, Judd's report concludes this way: "This development . . . underscores how Ken Starr is collecting evidence and witnesses to build a case against the president—a case that would not hinge entirely on the word of Monica Lewinsky."

2. On the night before (Saturday, January 24) ABC had televised a one-hour special on the alleged scandal, and according to anchor Peter Jennings, Judd had wanted to air her report then. But, says Jennings "I wanted to hold it . . . I was just not comfortable with the sourcing."

Asked later what happened between late Saturday night and early Sunday morning to make the story airworthy, Jennings says, "I wasn't there on Sunday, but I am told that Jackie worked on it more and was happy

with the sourcing by Sunday. . . . She is a fabulous reporter, and I have no reason to doubt her. . . . She plays by the rules and her sourcing is always great."

Judd later explains that "there was no start or stopping in this news cycle. So, yes, between Saturday night and Sunday there were new sources."

3. What can "several" sources mean? Webster's dictionary defines several as "more than two but fewer than many." Didn't Judd even know how many sources she had? Can there be any excuse for this imprecision other than that this was a figure of speech? "To me," Judd later explains, "it usually means a minimum of three. . . . I know it was at least three. Of course, I knew how many it was at the time, but I didn't think I needed to specify."

4. As of this writing, nearly four months after Judd's ABC "scoop," there is no sign of these independent witnesses.

Does ABC still think the story was right? I later ask Jennings. "We have not yet retracted it," he says, "and I am still happy she's had no reason to think we should retract it. . . . Overall, ABC has done a fabulous job. Our reporting on this has been exemplary, and I challenge anyone to find where it hasn't been."

"We have not had to retract a single thing," echoes Judd. "I still think there might be a potential witness," she adds.

Might be? A potential witness?

"Jackie Judd is a first-class reporter; she's no crackpot," says Richard Kaplan, who is president of CNN but until last year was a top news executive at ABC and used to supervise Judd. It's an assessment echoed by Judd's current colleagues, too. But a first-class reporter needs an editor—a questioner, someone who slows up on the accelerator at exactly the time that the reporter becomes certain that full speed ahead is the only speed.

This is especially true if the reporter is aggressive and has been covering a prosecutorial beat too long. For example, reporters who make their careers organized crime can become so inured to the badness of their targets and to the righteousness of the prosecutors on the other side that, after a while some believe almost anything the prosecutors tell them. There is an almost complete suspension of the skepticism that had made them want to be reporters in the first place.

That's what has happened to Jackie Judd this morning. And apparently there was no editor there to stop her. It was as if in the fabled scenes in the Watergate movie, All The President's Men, when Jason Robards, playing Washington Post executive editor Ben Bradlee, tells his "boys," Woodward and Bernstein, that they "need more," they shrug the old man off and take their stuff to the writing press.

And as with those organized crime reporters, it may be that Judd—and Schmidt and Isikoff, too—are right in general about President Clinton's allegiance to his marriage vows. Ditto Ken Starr. The issue here, though, is whether they're right about this particular allegation and are treating the president fairly in considering it. In short, whether there turns out to be a witness or now, how can Judd defend a January story declaring that there were witnesses by saying four months later that "there still might be a potential witness"?

THE WITNESS AS PREDICATED

Now that Judd's scoop has been aired, Sam Donaldson uses it as the predicate for much of his questioning of guests on This Week. They include Clinton aide Paul Begala, who attacks it as an unsubstantiated leak, and House Judiciary Committee Chairman Henry Hyde, who would preside over any initial impeachment hearings.

Donaldson begins with Hyde by saying, "Corroborating witnesses have been discovered . . . Mr. Chairman, what do you think of that?"

Hyde doesn't bite. "It's an allegation," he says. "We don't have any proof of it yet."

In their closing roundtable discussion, Donaldson tells co-anchor Cokie Roberts, "If he's not telling the truth, I think his presidency is numbered in days. . . . Mr. Clinton, if he's not telling the truth and the evidence shows that, will resign, perhaps this week."

"You have Sam Donaldson saying it's a matter of days, and Tim Russert talking about 72 hours—it's kinda crazy," Bob Woodward says later. "They seem to forget that it was April of 1974 when the tapes came out with Nixon saying, 'I want you to lie and it still took four months.'"

Three months later, Donaldson defends his prediction, saying, "I said, . . . 'if there is evidence,' and I thought evidence would be presented before now. And I clearly meant evidence that it is persuasive."

RATCHETING UP THE STORY

At the end of his show, Donaldson takes Judd's report a step further. Instead of Judd's "several sources have told us" introduction, Donaldson closes the show by declaring that "corroborating witnesses have been found who caught the president and Miss Lewinsky in an intimate act in the White House."

"Someone in the control room asked me to summarize Jackie's report," Donaldson explains later. "And one of the dangers of an ad-lib situation is that you never say it as precisely as you would like." As for the bona fides of the story three months later, Donaldson says, "All I can say is that we believed it was accurate, but people changed their minds about what they would say."

FOUR SOURCES

By about 3:00 Sunday afternoon, *The New York Times* is drafting its own story about witnesses interrupting the president and Lewinsky. "When I saw the Judd report on ABC, I recognized it as a story we were working on," *Times* Washington bureau chief Michael Oreskes later recalls. "By the time I came in that afternoon, we had four sources. And we were preparing to lead the *Times* with it the next morning."

BULLETIN

At 4:42 eastern time, Tom Brokaw and Claire Shipman of NBC break into pre-Super Bowl programming with the following bulletin:

Brokaw: "There's an unconfirmed report that, at some point, someone caught the president and Ms. Lewinsky in an intimate moment. What do you know about that?"

Shipman: "Well, sources in Ken Starr's office tell us that they are investigating that possibility but that they haven't confirmed it."

"Our anchor and White House reporter come on the air and say, here's something that we don't know it true but we just thought we'd tell you anyway just for the hell of it, so we can say we reported it just in case it turns out to be true," a disgusted NBC reporter says later. "That's outrageous."

Asked three months later why he aired that kind of "bulletin," Brokaw says, "That's a good question. I guess it was because of ABC's report. Our only rationale could be that it's out there, so let's talk about it . . . But in retrospect we shouldn't have done it."

Of course, what Shipman did confirm in that report was the commission of one certain felony, though not one involving the president: The leak of material from Starr's office pertaining to a grand jury investiga-

tion. For she does tell us that her report comes form "sources in Ken Starr's office."

In our later interview, when asked about Shipman's report, Starr refers me to Bennett, who, again, refused to discuss any conversations with specific reporters.

STORY KILLED

At about 6:00, the *Times* kills its witness story. According to Oreskes, reporters Stephen Labaton and John Broder "came in to me and said 'guess what? We don't have it.' It turns out that they had felt uneasy, and when they tracked back our four sources [Broder and Labaton], concluded that they were only telling them what they'd all heard from the same person—who did not know it firsthand anyway.

"Sometimes, especially in this thing, the story you're proudest of is the story you don't run," Oreskes adds. "We were under enormous pressure on this one . . . People were beating us. But sometimes you just have to sit there and take it."

PULLING BACK

By the time ABC airs its evening news at 6:30, Jackie Judd is pulling back. In the morning, "several sources" had told her the president and Lewinsky was caught in the act. Now we hear from her only that "Starr is investigating claims" that a witness caught them in the act.

Day 6: Monday 1/26/98

CAUGHT IN THE ACT

Picking up on Judd's "scoop," both the *Daily News* and post in New York scream. "Caught In The Act" across their front pages this morning. Meanwhile, the *St. Louis Post-Dispatch*, in a story bylined "From News Services," reports (as do other newspapers using similar wire services) that "ABC News reported that the president and Lewinsky were caught in an intimate encounter.

'ALL THIS STUFF FLOATING AROUND'

One of the stranger pick-ups of Judd's witness story comes from the *Chicago Tribune*, a paper "shut out of getting our own scoops from Starr because we never invested in having our people cover him on Whitewater," according to Washington bureau Chief James Warren.

The *Tribune* reports what ABC reported, then says that it could not confirm the story independently: "I was against using it, but agreed to this as a compromise," Warren explains later.

Tribune associate managing editor for foreign and national news George de Lama says later, "We figured that our readers had seen it and had access to it. So we had to acknowledge that it existed, and we wanted to say we could not confirm it."

It is indeed a dilemma. Should a story become a news item that has to be repeated and talked about simply because it is broadcast the first time? Or should *Chicago* newspaper readers be shielded from it?

"In retrospect," de Lama later concedes, "I wish we had not published it. . . . It soon became clear to us that there's gonna be all kinds of stuff out there floating around and we should just publish what we know independently."

Which the *Tribune* later did, admirably, with a scoop interview of press secretary Mike McCurry musing about the possibility that the truth of the president's relationship with Lewinsky is "complicated," and with a story about money going to a legal defense fund for Paula Jones being used by Jones personally.

'DESPERATE TIMES'

Again, *Newsweek's* Evan Thomas has forgotten his own admonition about reporters mouthing off on television. On *Good Morning America* to promote *Newsweek's* new issue, he

is asked, "Do the [president's] advisers think that the American people are going to draw some sort of distinction between sexual acts?" To which Thomas replies, as if he knows, "Desperate times call for desperate measures."

MORE PRESSURE ON LEWINSKY

On the NBC *Nightly News*, David Bloom, with his ever-helpful "sources," puts more pressure on Lewinsky and Ginsburg. "[S]ources also caution that if no deal is struck tonight, [Lewinsky] could be hauled before a . . . grand jury. . . as early as tomorrow." Four months later, there would still be no deal and no Lewinsky testimony.

MONICA AT THE GATES

On CBS's evening newscast, Scott Pelley reports that "sources" tell him that on January 3, Lewinsky was "denied entry at the [White House] gate" and "threw a fit, screaming, Don't you know who I am?" It's a report that doesn't get picked up by the rest of the media, despite its apparent news value; if true, it would mean that during this exact week that the president was trying to get Lewinsky to participate in a cover-up, she was being turned away at the White House. But three months later Pelley maintains, "I know this story was true."

'THIS JUST IN': A SEVENTH-HAND STORY

Larry King Live seems to be going well for the president. This is the night of the day when the president forcefully denied having had sex with "that woman, Miss Lewinsky." Former campaign aide Mandy Grunwald and the Reverend Jesse Jackson (plus the ubiquitous Evan Thomas, Republican politico Ed Rollins, and former *Washington Post* executive editor Ben Bradlee) are engaged in a balanced, calm discussion for most of the show. Then, with a few minutes left, King returns from a commercial break with a bulletin:

"Panel, this just in from Associated Press, Washington: A Secret Service agent is reportedly ready to testify that he saw President Clinton and former White House intern Monica Lewinsky in a compromising position. The *Dallas Morning News* reports tonight [on its website] that it has talked to an unidentified lawyer familiar with the negotiations between the agency and the office of . . . Ken Starr. The paper quotes the lawyer as saying the agent is, quote, "now a government witness," end quote."

Reread that paragraph. At best, it's a fourth-hand report (though, as we'll see, it's actually seventh-hand). The Associated Press (1) is quoting The *Dallas Morning News* (2) as quoting an anonymous lawyer-source (3) as saying that a witness (4) will say something. Yet it punctures the "maybe-Clinton-will-survive" tone of the rest of the King show—as it does the remainder of Geraldo Rivera's show on CNBC, where he introduces the AP report as follows: "Uh-oh, hold it. Oh, hold it. Hold it, hold it, hold it. Bulletin, Bulletin, Bulletin. Associated Press, three minutes ago. . . ."

Ninety minutes later, The *Dallas Morning News* pulls the story, because, the *News* would later explain, its source called in to say they had gotten it wrong.

"You get handed something you read it," Larry King says later. "I didn't have to, but I kind of felt compelled to. . . . It wasn't the *New York Post*. It was the AP and The *Dallas Morning News*. It's a dilemma of live television. What do you do? You're at the mercy of what's handed to you."

CNN president Richard Kaplan says later that he had been asked earlier in the evening by CNN producers who had heard about the possible *Dallas* story whether they should use it if the *Morning News* indeed published it. He had said no. "But then Tom Johnson"—CNN's chairman and Kaplan's boss—

"called into the control room," Kaplan says. "Tom knew these Dallas people well and he said they were reliable."

Johnson says that his go-ahead for CNN to report the Dallas Morning News story came only "after some producer just ripped it off the wire and had Larry read it; I then told them it was okay to do it on the ten o'clock news how, too." Still, Johnson confirms that "it's my fault. I called around to the Morning News people and to AP people, and they assured me on this story. . . . The Morning News people told me the source, who was some lawyer. . . . But I'm the one who made the decision."

Associated Press Washington bureau chief Jonathan Wollman explains later that AP uses its own judgment in deciding which stories from other news organizations to publish on its wire. He also notes that, soon after his organization filed the report that Larry King read, "we added something from our own people quoting Secret Service agents as being skeptical of the Morning News story. Then we added something from the White House disputing the story."

In fact, this story was a leak from a Washington lawyer named Joseph diGenova. He and his wife, Victoria Toensig, are former federal prosecutors who often appear on talk TV, defending Starr and making the case for the president's guilt.

According to Toensig, she had been approached by a "friend of someone who is a former worker in the White House." (Toensig will not say if the person's friend was a Secret Service agent or a White House steward.) The person who contacted Toensig told Toensig that this former White House employee had been told by a coworker at the White House that the coworker had, says Toensig, "seen the president and Lewinsky in a compromising position." Toensig was asked by the friend whether she might be willing to represent this secondhand witness if this person decided to go to Starr and talk about what the alleged firsthand witness (the coworker) had said.

DiGenova had overheard his wife discussing this possibility with this friend of the secondhand witness. Then, according to diGenova, after he had heard Jackie Judd's report of a witness on Sunday, he "mentioned" to Dallas Morning News reporter David Jackson that he'd "heard the same story that Judd had broadcast." Without telling Jackson, diGenova was thinking about what he had heard his wife discussing. However, by the time diGenova had mentioned this to Jackson, unbeknownst to him, the person who had approached his wife on behalf of this secondhand witness had broken off the discussions, and the secondhand had not come forward. According to Toensig, when Jackson called her on Monday and asked her about the story. "I told him, 'If Joe [her husband] told you that, he's wrong. Do not go with that story.' But I guess he didn't believe me."

According to Toensig, before her talks with the friend of the possible secondhand witness had broken off, she had mentioned the possibility of the witness to people in Starr's office—which means that when Jackson of the Morning News called Starr's office to get a second-source "confirmation," his second source was, in fact, no second source at all. It was just someone playing back diGenova's now-inoperative story, which diGenova's wife had tried to shoot down.

"When I saw Geraldo read the bulletin," Toensig recalls, "I figured they must have gotten it from someone else—not Joe and certainly not me. Then I got a call from [the Morning News] later that night and Jackson asked me to tell him again that he was right . . . and I immediately said, 'I told you you were wrong earlier to not go with it.'"

"This was a single-source story from me," diGenova concludes. "I thought they'd check it; all I did was give them a vague tip of what I had heard Vicki talking about on the phone." Jackson of The Dallas Morning News declines to comment on his conversations with diGenova or his sources for the story.

In short, this story of a "Secret Service" witness seems to have been a one-source story from a fifth-hand source: DiGenova (1) heard his wife (2) talking to a friend (3) of someone (4) who had talked to someone (5) who said he'd seen Lewinsky with Clinton. That makes CNN's report a seventh-hand story, because we have to add The Dallas Morning News and The Associated Press to the chain before we get to Larry King.

"As a result of the Morning News thing," CNN's president of global gathering and international networks, Eason Jordan, says later, "We instituted a new policy. At least two senior executives here have to give the okay before we go with anyone else's reporting on anything having to do with this story. . . . We've decided that it's a total cop-out to go with someone else's stuff and just attribute it to them. Once you put in on your air it's your responsibility."

"I can't tell you how much pressure we were under from our own bosses to report something like the Morning News reported," CBS's Dan Rather remembers. "that rumor was all over the place. But we just couldn't nail it. . . . It was a third-hand source and maybe a fourth-hand source."

"Without getting into details," adds Scott Pelley of CBS, "I can tell you that we just didn't like the sourcing. It was too suspect."

According to a journalist at ABC, and to two reporters working on the story that day at rival news organizations, Jackie Judd's sources for her report about a White House witness the night before were also people in Starr's office who had heard about the supposed secondhand witness, probably from Toensig. Which would make hers a fifth-hand report, too.

Jennings disputes this. "I have no doubt that we were on to a different story," he says, "because I know who our sources are." Could his sources, whom he declined to name, have been people who had simply talked to the Dallas paper's sources? "I'm fully satisfied that they weren't," he says.

Judd refuses all comment about "anything having to do with sources."

A GOOD DAY ON THE WEB

At MSNBC's ambitious website there have been 830,000 visits today, far more than for any other day, including the days following the death of Princess Diana.

Day 7: Tuesday 1/27/98

THE RETRACTED STORY LIVES

The St. Louis Post-Dispatch reports this morning that "The Dallas Morning News reported Monday night that a Secret Service agent was prepared to testify that he saw Clinton and Lewinsky in a compromising situation."

GOODBYE

Tonight is the night of the president's State of the Union message, and in The Washington Post, James Glassman writes a column saying that the president should say he's sorry and that he's resigning.

'RECKLESS IDIOT'

New York Times op-ed foreign affairs columnist Thomas Friedman writes about his feeling of personal betrayal: "I knew he was a charming rogue with an appealing agenda, but I didn't think he was a reckless idiot with an appealing agenda."

FOUR OPTIONS

On the Microsoft-owned and Michael Kinsley-edited Slate web magazine, Jacob

Weisberg presents four options for the president with their chances of success: Brazen It Out: 20 percent; Contrition: 5 percent; Full Confession: 15 percent; and Wag the Dog: 2 percent.

CIRCULATION UP

The Washington Post reports that USA Today printed 20 percent more copies than usual for its weekend edition, that CNN's rating are up about 40 percent, and that Time added 100,000 copies to its usual newsstand distribution.

'LET'S NOT ASK ABOUT ANY RUMORS'

The event of the day is Hillary Clinton's morning appearance on the Today show, forcefully defending her husband, Matt Lauer interviews her, and does a terrific job.

"We found out over the weekend that she was going to go through with [the long-scheduled interview]," Lauer says. "On Monday afternoon I sat down with [various producers and NBC News president] Andy Lack to run through it for about two or three hours. . . . It wasn't so much about questions as about tone. . . . We talked about asking her about whether the president defines oral sex as sexual relations, but we decided that we were not going to ask the First Lady of the United States a question like that."

"Another thing we decided," Lauer says, "was that we were not going to ask a single question based on rumor or speculation."

Why was that standard used for Mrs. Clinton, but for no one else?

"Because we knew we'd run into a dead end because she'd say, 'that's based on rumor or a sealed document,' or something like that, 'and I'm not going to talk about it.'"

If only other Today guests had that discipline.

Day 8: Wednesday 1/28/98

DO AS WE SAY, NOT AS WE DO

The St. Louis Post-Dispatch greets its readers with an editorial that slams Jackie Judd's ABC report about a "witness" and the Dallas Morning News report about a "Secret Service witness" as examples of "rumor being reported as news. . . . The media would be best to stick with traditional conventions that require firsthand information and confirmation from multiple sources," says the paper.

Not mentioned is the fact that the Post-Dispatch had itself reported both stories in its own news columns. Why not? William Freivogel, who wrote the editorial for the Post-Dispatch, explains. "We don't in general criticize our own paper. . . . This was meant as a general commentary."

Day 9: Thursday 1/29/98

THE VANISHING DRESS

The CBS Evening News leads with a scoop. Scott Pelley reports that "no DNA evidence or stains have been found on a dress that belongs to Lewinsky."

"I'd much rather have our scoop about the semen dress than the scoop everyone else had," Pelley says later.

The next night, Jackie Judd will spin the no-dress story her way. She'll say "law enforcement sources . . . say a dress and other pieces of clothing were tested, but that they had all been dry-cleaned before the FBI picked them up from Lewinsky's apartment." In other words, the lack of evidence only proves how clever the criminals are.

Whether it turns out that Bill Clinton had sex with Monica Lewinsky or not (and whether it turns out that he stained one dress or 100 dresses) has nothing to do with the fact that Judd's every utterance is infected with the clear assumption that the president is guilty at a time when no reporter can know that.

Day 10: Friday 1/30/98

THOSE TERRIBLE PAPAARAZI

The Daily News leads with a story about Lewinsky being mobbed by the press when she went out to dinner in Washington the night before with Ginsburg. "The black car being pursued by the paparazzi echoed the scene just before the car crash that killed Princess Diana," the paper reports.

On the front page of the paper is the paparazzi shot of Lewinsky in the car.

Asked later why his own paper would help enhance the market for paparazzi misconduct by buying a photograph taken under circumstances that his paper described as so intimidating and dangerous. Daily News owner and copublisher Mortimer Zuckerman said he would have to call me back. He didn't.

THREE 'PRECIOUS WORDS'

Jeff Greenfield, who has just joined CNN from ABC, proves why he may be one of the smartest people on television. On Larry King Live, he's asked what he thinks of Linda Tripp having charged today that she was present at 2:00 a.m. in Lewinsky's apartment when the president called one night. His answer: "Well . . . since I was not in the room, have not talked to Linda Tripp, have not talked to Monica Lewinsky, have not heard the tape . . . I think the best course of action is for me to say, 'I don't know.' And, you know, I am beginning to think those might be the three most precious words that we all ought to . . . remember . . . This notion of guessing . . . what . . . do we think the president, if it was the president, might have said to Monica Lewinsky that Linda Tripp could conceivably have heard that I haven't talked to her about? I'll pass."

Day 11: Saturday 1/31/98

TRIPP SURFACES

The big story in the morning newspapers is that Linda Tripp has come out of hiding to issue the statement King asked Greenfield about the night before. Tripp charges, as the St. Louis Post-Dispatch dutifully reports in a widely circulated Associated Press story, that Lewinsky described "every detail of an alleged affair with Clinton during hundreds of hours of conversations over the last 15 months. In addition, I was present when she received a late night phone call from the president. I have also seen numerous gifts they exchanged and heard several of her tapes of him."

Another wire service story in the same edition of the Post-Dispatch says Lewinsky lawyer Ginsburg denies that Tripp "ever was 'pry into any conversation' between Lewinsky and President Bill Clinton."

What's most curious about Tripp's statement is that witnesses who are cooperating with prosecutors are routinely forbidden from making any public statements, in exchange for not being prosecuted themselves. (Tripp was potentially vulnerable under a Maryland law that prohibits taping telephone conversations without the consent of both parties.) "She made her own decision," Starr later contends. "You can't control the actions of an independent-minded human being."

Day 12: Sunday 2/1/98

MORE FROM THE FBI TAPES

Starr's people have obviously continued to make good on their promise to give Isikoff the best seat in the house as they continue to trickle out the alleged contents of the tapes they made of Tripp and Lewinsky. Now, in its new issue, Newsweek reports that Lewinsky told Tripp that she had told Vernon Jordan she would not sign the affidavit stating she did not have sex with the president until he got her a job.

In another article, Newsweek declares that the magazine "has learned that [in his Jones deposition] Clinton swore he never met alone with Lewinsky after she left the employ of the White House. . . . But Newsweek has confirmed that Clinton and Lewinsky did in fact meet last Dec. 28, and investigators are examining the possibility of several other occasions on which the two met alone."

When Clinton's deposition is revealed three weeks later, the premise of this scoop would turn out to be wrong; the president did not say he hadn't met alone with Lewinsky.

Day 13: Monday 2/2/98

AN ALL-TIME HIGH

Most of the nation's newspapers report that polls show the president's popularity to be at an all-time high. Meantime, Susan Schmidt and Bill McAllister of the Washington Post lead with Star saying "his investigation of the Monica Lewinsky matter is moving swiftly."

Day 14: Tuesday 2/3/98

NO SECRET SERVICE AGENT

On the Evening News, CBS's Pelley says he has "learned that the Secret Service has conducted an internal inquiry and now believes that no agents saw any liaison between the president and Monica Lewinsky."

"I liked that scoop better than Jackie Judd's," Pelley says later.

Day 15: Wednesday 2/4/98

THE JOURNAL PUSHES THE BUTTON

Just before 4:00 p.m. Wall Street Journal reporter Glenn Simpson tells White House deputy press secretary Joe Lockhart that the paper needs comment for a story charging that White House steward Bayani Nelvis has told a federal grand jury that he saw President Clinton and Lewinsky alone in a study next to the Oval Office, and that after the two left he recovered tissues with "lipstick and other stains" on them. Lockhart says he'll get back to Simpson quickly.

Fifteen minutes later, and without waiting for Lockhart, the Journal publishes the story on its Internet site.

"When I told [Journal Washington bureau chief Alan] Murray that Joe was going to get right back to me, Alan told me it was too late," Simpson says later. "He had already pushed the button."

"The White House had taken the position [in general] that it was not commenting," Murray says. "So I figured, why wait?"

Murray, who refuses comment on whether Starr's office was the source for the story except to say, "I can promise you we had sources outside of Starr's office," concedes that he had heard that ABC was also on the story and that he wanted to beat them. Murray, who is known around Washington as an especially careful, responsible journalist, also acknowledged that his paper had just completed a joint venture agreement with NBC to provide editorial content to its CNBC cable network (which offers financial news during the day and talk shows at night) and that, "yes, it was in my mind that we could impress them with this." However, Murray also points out that because the Journal has long operated a wire service, "making instant publishing decisions was not new to us."

"They got too excited and Alan rushed to get on television," asserts one veteran Journal reporter, who says he has knowledge of the decision to publish.

Indeed, Murray appears on CNBC minutes after he pushes the button on his website reciting the Nelvis story. Almost immediately, the White House press office denounces the story, and Nelvis's attorney, who seems to be cooperating with White House lawyers, calls the story "absolutely false and irresponsible."

By the time the actual newspaper would go to bed later that evening, the Journal would pull back. It will report that the steward described the incident in question to Secret Service personnel, not to the grand jury.

When the paper sees daylight on February 5, White House press secretary Mike McCurry will denounce the Journal's online story—and its failure to await comment from him—as "one of the sorriest episodes of journalism I've ever witnessed."

By Monday, February 9, the Journal would be forced to report that "White House steward Bayani Nelvis told a grand jury he didn't see President Clinton alone with Monica Lewinsky, contrary to a report in The Wall Street Journal last week." And Journal managing editor Paul Steiger would be quoted in the same story as saying, "We deeply regret our erroneous report of Mr. Nelvis's testimony."

Could it be that Judd's report on Sunday night about a "witness" catching the president in the act, and The Dallas Morning News's dead-wrong, one-sourced, fifth-hand report on Monday night about a Secret Service agent being ready to testify, and this report about Nelvis testifying or, as it later became, about Nelvis telling a Secret Service agent what he had seen, are all different versions of the same story? "Yes, I am sure it's all the same story," says Victoria Toensig (the lawyer whose conversations that her husband had overheard became the "source" for the Dallas Morning News story).

Of course, it could ultimately turn out that a credible witness claiming to have seen the president and Lewinsky in a compromising position—or claiming that Nelvis told him or her about that—does come forward. By late-May, rumors would persist that Starr would produce at least that much. But the point is that, in early February, when these stories are published, they are at best third-, fourth-, or fifth-hand claims and the reporting of them as breakthrough news is a scandal.

NO OTHER BITES

It's near 6:00 p.m. and the networks have to decide how to handle the Journal's scoop.

ABC goes halfway, saying Nelvis has been called as a witness and "he might have been in a position to observe Mr. Clinton without the president's knowledge."

At NBC, "[vice president of NBC News] Bill Wheatley, [Nightly News executive producer] David Doss, and I were standing in a cubicle at 5:50 talking into a conference phone with Tim Russett," Tom Brokaw recalls. "The Journal's website story moving toward a full-blown story. But we decided, after talking to Tim, that it didn't have legs."

"We almost went with the Journal story," CNN's head of newsgathering, Eason Jordan, says. "But the rule we put in place after the Dallas Morning News screwup stopped us."

"The difference between this and Watergate," says Brokaw, "is what I call the Big Bang Theory of Journalism. There's been a Big Bang and the media have expanded exponentially. . . . Back then, you had no Nightline, no weekend Today or Good Morning America, no Internet, no magazine shows [except 60 Minutes], no C-Span, no real talk radio, and no CNN or MSNBC or Fox News doing news all day. . . . As a result of all that, the news process has accelerated greatly. . . . Something, some small piece of matter, maybe a rumor, can get pulled into the vacuum at night on a talk show or in the morning on Imus [the nationally syndicated radio show that is a bastion of smart, irreverent political conversation] and get talked about on radio or on CNN or MSNBC during the day and pick up some density, then get talked about some more or put on a website

that afternoon and pick up more density, and by late afternoon I have to look at something that has not just shape and density but some real veneer—and I have to decide what to do with it. That's kind of what happened with this one."

Brokaw's description of the care he took in this instance of the unsubstantiated Wall Street Journal story is impressive. And his assessment of the way the new technology of 24-hour cable channels and websites has forever turned the old news cycle into a tornado is right on the money. But the often sorry performance of his own news organization—for example, in chasing Judd's ABC "scoop" by rushing on that Brokaw-Shipman "bulletin" the prior Sunday of an "unconfirmed report" of a witness, let alone NBC's airing on sister channels MSNBC and CNBC of any and all rumors—makes it impossible not to conclude that Brokaw is describing an out-of-control process that he and his colleagues are often part of. He's like the articulate alcoholic at an AA meeting.

Day 16: Thursday 2/5/98

NO 'JAM JOB':

The New York Times "bulldog" edition comes out tonight with a Friday morning story that punctures the revelry among those who hear about it at the White House state dinner for British Prime Minister Tony Blair. It's about Clinton secretary Betty Currie having not been at work for "several" days because she was with Starr's people. Among other things, says the Times, Currie has spoken of having retrieved some presidential gifts from Lewinsky, and about how she had been called into the Oval Office the day after President Clinton faced those surprise Lewinsky questions at his Jones deposition and was taken by the president through a series of rhetorical questions and answers.

The article, by Jeff Gerth, Stephen Labaton, and Don Van Natta, Jr., seems to be yet another relying on prosecutorial leaks rather than Watergate-like firsthand reports from witnesses. In fact, in our interview, Starr acknowledges that he personally had met with Labaton and Gerth about the story, although, he says, "My understanding was that they knew the substance of it . . . I only wanted to talk to them about its timing." Starr urges me to talk to his deputy, Bennett—who, he says, had "talked more extensively with the Times for the story." As for why he had not been quoted by name if the discussion was not improper, Starr says only that Bennett "knows about the ground rules."

But Bennett refuses to discuss the ground rules, while asserting that he was "in no way a source for the information in the Time's Betty Currie story." No one at the Times will discuss their sources for this or any other story, but one top Times editor points out that the reporters could not have cared about discussing the timing of the story with Starr because "we ran it in the next available paper" after that meeting.

Prepared over several days—"this was not some Sue Schmidt jam job," says one Times reporter—the Time's Currie story would stand out nearly four months later as the most damaging to the president—and the one whose basic facts had not been challenged. But although it is precisely written and careful not to draw conclusions, it will not be read by the rest of the press with the same precision.

COACHED

On Nightline, Ted Koppel scraps a planned show on the International Monetary Fund. He opens by announcing "a later-breaking story" that "the president's personal secretary is said to have told investigators that

she was coached by President Clinton to say things she knew to be untrue."

"This was a breaking story, and the opening has to be written very quickly," Koppel later recalls. "But right after that I quoted the Time's language exactly. . . . Our opener is like a magazine cover or news headline; it frequently will use a grabber verb or adjective than is used later on."

Nightline guest Sam Donaldson also repeats the word "coached." Only NPR's Nina Totenberg, another guest, is more careful: "This story . . . is fairly clearly a leak from the prosecutor's office and with the exception of [the gifts] . . . it is their characterization of what Betty Currie has said."

By the next morning, Currie's lawyer—who was quoted deep down in the original Times article saying that Currie was not "aware of any illegal or ethical impropriety by anyone"—would issue a statement declaring that it is "absolutely false" that his client believed that Clinton "tried to influence her recollection." The White House, meanwhile, offers its own spin on the Clinton session with Currie: The president was simply refreshing his own memory.

Whatever the full story, what matters is that the Times didn't spin it one way or the other, while the rest of the press did.

"Everyone said we said 'coaching,' but we didn't," Gerth recalls later. "There was a lot of deliberation here over what words went into that story. . . . The story as written, not as interpreted, was accurate."

"I still have no idea whether she was coached or not," says Times Washington bureau chief Oreskes. "We were acutely aware of the fact that we were dealing with descriptions and partial descriptions that were secondhand."

Day 17: Friday 2/6/98

COUNTERATTACK

The morning shows are filled with talk about the president "coaching" Betty Currie, as are the newspaper headlines. ("Prez Told Me To Lie," screams the New York Post.)

But by the afternoon, the White House has turned the day around. First there is the president's relaxed, effective performance at his afternoon joint press conference with Prime Minister Blair. Then there's a counterattack from his lawyer, David Kendall, who bashes Starr for alleged unlawful leaks and distributes a 15-page letter to Starr that claims to document them.

Kendall's slam works so well that the NBC, ABC, and CBS evening news shows lead with it. The only talk about the Times Betty Currie story—the stuff of the Nightline show the night before—comes by way of explaining that this is the latest leak that the Clinton lawyers are so angry about.

The reason it's working has to do with the dynamics of the media. True, the press loves a good crime investigation and loves reporting the leaks that trickle out. But even more, reporters love a one-on-one fight. It's more dramatic easier to understand—and it makes booking pro and con guests on the talk shows a breeze.

"We'd been talking about leaks since this started," says White House spin man Paul Begala. "But sometimes you just have to get up and scream it and start a food fight to get them to write about it."

"Because we decided not to get into specific denials of most of this stuff, we could not answer with facts," concedes former White House scandal counsel Lanny Davis. "So we answered with a fight about the process and the prosecutor."

SHOWING THEIR COLORS

Now it has become a Starr-Clinton food fight, the reporters on the talk shows are

even more tempted to show their real colors. Rather than "analyze" what is happening in the investigation, tonight they are called upon to take sides. It is almost scary to watch people who sell themselves as unbiased reporters of fact by day become these kind of fierce advocates at night once the camera goes on.

A good example is Stuart Taylor, Jr., the serious, scrupulous, and brilliant senior writer for the National Journal who virtually started all of this with a groundbreaking 1996 piece on the Paula Jones suit in The American Lawyer that, by Newsweek's own account, had inspired the Newsweek cover story about the case. Taylor has become the complete anti-Clinton partisan. He makes no bones about it, so much so that the one television show that prefers calm analysis to food fights—The NewsHour with Jim Lehrer on PBS—has already dropped him from his legal analyst perch. (I was the co-owner and editor of the American Lawyer when Taylor's Jones piece was published.)

Now, on Nightline, Taylor takes the absurd Starr position as his own—that if prosecutors leak material coming from their talks with witnesses as they prepare them for the grand jury, they are not committing a crime, because only leaks from actual grand jury testimony are crimes. That's not what the courts have ruled, and it's a quite a bit of legalistic derring-do, coming from someone who said 11 days earlier on Nightline, in referring to the president, that "innocent people with nothing to hide who tell the truth don't need to surround themselves with phalanxes of lawyers." (About six weeks after this appearance, Taylor would begin negotiating with Starr to take a job advising Starr and writing the independent counsel's report to the House of Representatives, but he would ultimately decide not to accept the offer.)

Day 18: Saturday 2/7/98

LEAKS? WHAT LEAKS?

The nation's newspapers generally highlight Kendall's leak charges. Many of those writing the stories, such as Schmidt and Baker of The Washington Post, know from their own experience the charges are true. But they can't and won't say it.

Two days later, media reporter Howard Kurtz of The Washington Post (who is also a contributor to this magazine) would write a story headlined "With Leaks, Reporters Go With The Flow." In the piece, Kurtz describes the "bizarre quality to the weekend coverage of White House charges that . . . Starr was illegally leaking. . . . At least some journalists at each major news organization know whether Starr's staff is in fact dishing on background, but the stories are written as though this were an impenetrable mystery."

Day 19: Sunday 2/8/98

WE CAN'T ASK

Time magazine is out this morning with a cover story entitled "Trial By Leaks." The story has a problem: It's produced by reporters, writers, and editors who know the truth but can't write it.

Even a wordsmith as skilled as Time senior editor Nancy Gibbs—who, as with the first Time Lewinsky cover story, pens the lead piece here—can't write around this problem. Describing leaks "so fast and steady" that they are "an underground river," Gibbs proceeds over five pages simply to describe all the leaks—in essence republishing even the now-discredited ones. But nowhere does she confront the basic question the article raises: Aren't Starr's people leaking? Nowhere do we find a Time reporter asking Starr what any reporter would ask in any other story: whether he or Bennett or anyone else in the office has talked to specific

reporters who are the obvious beneficiaries of leaks.

It's hardly an unimportant question. For in the entire Lewinsky story there is a lot more evidence of Starr and some of his deputies committing this felony than there is of the president or Vernon Jordan committing a felony. The problem is that the best witnesses—the witnesses with firsthand knowledge—are the reporters and editors covering the story.

"We can't ask Starr or Bennett if they have leaked to this or that reporter, because we are out there getting those leaks ourselves from them." Time managing editor Walter Isaacson later concedes.

TARRING THE TIMES

The White House spin people are out in force today. At noon, on CNN's Late Edition with Wolf Blitzer, top Clinton Advisor Rahm Emanuel charges that in both the case of the Wall Street Journal steward-witness story and the Time's Betty Currie story, "lawyers representing those individuals issued statements saying these stories are blatantly false."

Not true in terms of the Times. Currie's lawyer had simply stated that all of the coaching interpretations of that story—not the carefully written Times story itself—were false. In other words, Emanuel has skillfully, and cynically, used one bad story—the Journal's—to tar the Times story, the facts of which no one had disputed by that morning (and which no one has disputed as of this writing, and which remains, with its accounts of gifts retrieved and testimony reviewed, the single most damaging story for the president).

This raises a larger issue. Because so much of the reporting of the Lewinsky story would turn out to be discredited, the journalism that should not be discounted by the public will be. That's because the average reader or viewer, especially when pushed this way by the White House, will not be able to discern the difference.

Day 21: Tuesday 2/10/98

A MATTER OF HONOR

Geraldo asks cowboy lawyer Gerry Spence about a "powerful man of a certain age . . . who is accused of accepting sexual favors from an allegedly frisky young California girl. Gerry." Rivera says, "I believe you have some folk wisdom to impart?"

Spence dives in: "Why hasn't he told the truth about this alleged peccadillo? . . . I was sitting in the little town of Newcastle the other day and talking to an old cowboy. And here's what he had to say about that. . . . 'Well,' he said, 'Here's to the heights of heaven and here's to the depths of hell, and here's to the dirty SOB who'd make love to a woman and tell.'"

Day 22: Wednesday 2/11/98

ALONE AT LAST

Susan Schmidt has another scoop, and it's a firsthand report, not a leak. This morning she writes that former uniformed Secret Service guard Lewis Fox says that he was posted outside the Oval Office one Saturday in the fall of 1995 and he saw the president meet alone with Lewinsky for 40 minutes in the early afternoon. Schmidt makes much of this. In her lead sentence, 40 minutes becomes "Monica S. Lewinsky spent part of a weekend afternoon in late 1995 alone with President Clinton. . . ." And that, she says, makes Fox "the first person to publicly say that he saw the president and Lewinsky alone together."

But there's less here than meets the eye. Strangely, Fox is paraphrased but not quoted in Schmidt's article because, she later asserts, "he refused to be quoted." It's a rate article that is wholly about an on the

record interview with someone (and headlined as such) in which that person is not quoted at all.

But it turns out that Fox had been liberally quoted in his local Pennsylvania newspaper and on Pittsburgh television before Schmidt got to him, saying that, yes, he had seen the two alone, but that he doubted anything untoward could have happened because there are so many ways to see into the Oval Office and there is such a constant threat of interruption from people walking in.

Why didn't Schmidt ask Fox if the two could have been interrupted? "I wasn't interested in his opinion," she says later. "Who care about his opinion? Clinton testified that he was never alone with her, and this guy makes him a liar. Period."

In fact, when the president's deposition in the Jones case is made public soon after this interview with Schmidt, it turns out that Clinton did not testify that he was never alone with Lewinsky.

"This story was a perfect example of Sue Schmidt's attitude," says Clinton aide Emanuel. "Anyone who things the president could do something like that uninterrupted on a f—king Saturday is either in fantasy land or doesn't care about facts. We're all here on Saturday at 1:00. We live here, goddamnit."

THE GOOD, THE BAD, AND THE GERALDO

It is tempting to dismiss Geraldo Rivera as a sleazy peddler. But he is also one of the smartest, best-prepared newsmen out there.

And tonight, as with many nights of his Lewinsky circus, he shows it. Talking about Schmidt's Washington Post story on Secret Service officer Fox, Rivera says, "We note, however, for the record, that the agent's story has become . . . [in Schmidt's hands] far more damning since he first began talking about a week ago. Back then Fox told a local newspaper . . . that it would've been difficult for the two to have had a sexual encounter while in the Oval Office because of its many windows. . . . And we also note for the record that every allegation [about] purported eyewitness to the president and Monica's being alone, including last week's account of Mr. Nelvis in The Wall Street Journal, has so far proven erroneous."

CIRCUS OR TOWN MEETING

Rivera's show is emblematic of these first three weeks of coverage of the Lewinsky story. There was some good reporting and some sharp analysis. But it was mixed in with so many one-sided leaks and rumors that it was diluted into nothingness—so much so that many opinion polls showed that a majority of Americans believed the president to be guilty of something he adamantly denied and about which there is not yet nearly enough real evidence to know for sure, one way or the other.

Brokaw may be right: Americans may be good at filtering out the reliable from the nonreliable. It could also be argued that, in the old days, any town meeting would have had some crazies and gossips take the stage or whisper among the audience the way the crazies and prosecutor-fed gossips took to the printing presses and the electronic stage in the days following January 21.

But in the end that only euphemizes the appalling picture of the fourth estate presented by the first three weeks of this imbroglio.

Because it is episodic, the log presented above does not convey that overall picture, nor does the more subdued coverage of later weeks in this story.

But you can remember it.

It's a blizzard of newspaper front pages and magazine covers and every TV news show and pseudo-news show giving this story the

kind of play that no story—none, not Princess Diana, not O.J., and certainly not Watergate—has ever gotten.

And so much of that coverage was rumors and speculation, that when a self-styled Committee of Concerned Journalists did a study examining 1,565 statements and allegations contained in the reporting by major television programs, newspapers, and magazines in the first six days of the circus, they found that 41 percent of the statements were not factual reporting at all, but were "analysis, opinion, speculation, or judgement"; that only 26 percent were based on named sources; and that 30 percent of all reporting "was effectively based on no sourcing at all by the news outlet publishing it."

It doesn't take Woodward and Bernstein to know that most of those anonymous sources were from Starr's office, spinning out stories to pressure Lewinsky or other witnesses and to create momentum and a presumption of guilt. I have personally seen internal memos from inside three news organizations that cite Starr's office as a source. And six different people who work at mainstream news organizations have told me about specific leaks.

Here's more specific, tangible, sourced proof of the obvious: For an internal publication circulated to *New York Times* employees in April, Washington editor Jill Abrahamson is quoted in a discussion about problems covering the Lewinsky story as saying, "[T]his story was very much driven in the beginning on sensitive information that was coming out of the prosecutor's office. And the [sourcing] had to be vague, because it was . . . given with the understanding that it would not be sourced."

And, as we have seen, Starr himself conceded to me that he talked to the *Times* about the Betty Currie story and often talked to other reporters, and he has all but fingered Bennett as 1988's Deep Throat. Moreover, his protestation that these leaks—or "briefings," as he calls them—do not violate the criminal law, and don't even violate Justice Department or ethical guidelines if they are intended to enhance confidence in his office or to correct the other side's "misinformation," is not only absurd, but concedes the leaks.

Worse still is the lack of skepticism with which the press by and large took these leaks and parroted them.

To be sure, that kind of leak-report dynamic is common in crime reporting, where reporters make lawmen look good and defendants look bad by publishing stories of mounting evidence in ongoing investigations.

Yet there's a difference here. In the typical criminal process, all that bad publicity historically hasn't outweighed the burden of proof and the ability of a jury to focus on the evidence actually presented at trial. Juries are famous for getting from "where there's smoke there's fire" to looking at specific evidence. But Bill Clinton is not going to have a trial with that kind of jury. If he gets any hearing at all, it will be an impeachment hearing—which is a political process, a process where all the bad effects of all the leaks could count. And absent an impeachment hearing, the president's continuing ability to do his job will depend in some part on his public standing.

Many now agree that it is hard to imagine that a powerful independent counsel under no real checks and balances is what the Founding Fathers had in mind when they wrote the Constitution. It is harder still to imagine that a press corps helping that prosecutor in his work by headlining whatever he leaks out—instead of remaining professionally suspicious of him and his power—is what the founders had in mind when they

wrote the First Amendment. The press, after all, is the one institution that the Founding Fathers permanently protected so that reporters could be a check on the abuse of power.

And it is impossible to imagine that what the founders had in mind when they wrote the impeachment clause is that a president could be brought down by that prosecutor and by that press corps, all because a Linda Tripp had a Lucianne Goldberg got an intern to talk into a tapped phone about sex so they could put together a book deal.

So far, it seems that the American people understand this, even if the press doesn't.

So maybe it's the press that needs to draw lessons from Pressgate, not its customers. Or maybe the customers can force these lessons on the press by being more skeptical of the product that is peddled to them. I have three such lessons in mind:

First, consumers of the press should ignore all publications or newscasts that try to foist the term "sources" on them unaccompanied by any qualifiers or explanation. The number of sources should be specified (is it two or 20?) and the knowledge, perspective, and bias of those sources should be described, even if the source cannot be named. (Is it a cab driver or a cabinet officer, a defense lawyer or a prosecutor?)

Second, no one should read or listen to a media organization that reports on another news outlet's reporting of anything significant and negative without doing its own verification.

And, third, no one should read or listen to any media outlet that consistently shows that it is the lapdog of big, official power rather than a respectful skeptic.

The big power here is Ken Starr. Prosecutors usually are in crime stories, and the independent counsel's power is unprecedented.

This is what makes Pressgate—the media's performance in the lead-up to the Lewinsky story and in the first weeks of it—a true scandal, a true instance of an institution being corrupted to its core. For the competition for scoops to toss out into a frenzied, high-tech news cycle seems to have so bewitched almost everyone that the press eagerly let the man in power write the story—once Linda Tripp and Lucianne Goldberg put it together for him.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes. (Ms. ROS-LEHTINEN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. SCARBOROUGH) is recognized for 5 minutes.

(Mr. SCARBOROUGH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. RUSH) is recognized for 5 minutes.

(Mr. RUSH addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Idaho (Mrs. CHENOWETH) is recognized for 5 minutes.

(Mrs. CHENOWETH addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

COLUMBIA JOURNALISM REVIEW ARTICLE "WHERE WE WENT WRONG . . . AND WHAT WE DO NOW"

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HINCHEY) is recognized for 5 minutes.

Mr. HINCHEY. Mr. Speaker, it is coincidental that my good friend, the gentleman from Michigan, was here just a few moments ago and entered into the RECORD the article by Stephen Brill which appeared in Brill's Content, the Independent Voice of the Information Age, which talks about Pressgate.

In that article, Mr. Brill says on the cover, "In Watergate, reporters checked abuse of power. In the Lewinsky affair, they enabled it; that is, the press enabled abuse of power by lapping up Ken Starr's leaks, which he now admits for the first time, the inside story day by day. Mr. CONYERS just entered that article into the RECORD.

I would like to take this opportunity to draw the attention of the Members of the House and anyone else who is interested in this issue to the March-April edition of Columbia Journalism Review. I do so because, unfortunately, Mr. Brill's article has been attacked. It has been attacked most vociferously by the Independent Counsel and the apologists for the Independent Counsel, Mr. Starr.

However, objective analysis of Mr. Brill's article shows that in spite of the attacks against it, the article stands up very well and reveals quite clearly the abuse of power engaged in by the Independent Counsel in this particular investigation.

The Independent Counsel, it appears, and it is shown by Mr. Brill's article, engaged in a conscious series of leaks of misinformation to the press over a prolonged period of time. Now, if additional substantiation is needed going beyond Mr. Brill's report, that additional substantiation can be found to a remarkable degree in that March-April edition of the Columbia Journalism Review.

The article in Columbia Journalism Review, and it is a cover story, is entitled "Where We Went Wrong," and it is an examination of the press coverage of the so-called events that the prosecutor is allegedly looking into.

I would like to read a few brief excerpts from the story in the Columbia Journalism Review and then enter the entire article in the RECORD.

The article says, in part, "But the explosive nature of the story, and the speed with which it burst upon the consciousness of the Nation, triggered in the early stages a Piranha-like frenzy in pursuit of the relatively few tidbits tossed into the journalistic waters—by whom," the story asks?

"That there were wholesale leaks from lawyers and investigators was evident, but either legal restraints or reportorial pledges of anonymity kept the public from knowing with any certainty the sources of key elements in the saga."

The story goes on: "Not just the volume but the methodology of the reporting came in for sharp criticism—often more rumor-mongering than fact-getting and fact-checking, and unattributed approbation of the work and speculation of others. The old yardstick said to have been applied by the Post in the Watergate story, that every revelation had to be confirmed by two sources before publication, was summarily abandoned by many news outlets," and no wonder, because they thought they were getting the information from the horse's mouth, from Mr. Starr and his investigators.

The story goes on: "As often as not, reports were published or broadcast without a single source named or mentioned in an attribution so vague as to be worthless. Readers and listeners were told repeatedly that this or that information came from "sources", a word that at best conveyed only the notion that the information was not pure fiction or fantasy. As leaks flew wildly from these unspecified sources, the American public was left, as seldom before in a major news event, to guess where stories came from and why.

"Readers and listeners were told what was reported to be included in affidavits and depositions . . . or presented to Independent Counsel Starr. Leakers were violating the rules while the public was left to guess about their identity and about the truth of what was passed on to them through the news media, often without the customary tests of validity."

Of course, the story goes on.

I include this article for the RECORD, Mr. Chairman. We will take other opportunities to talk more about this in the future.

The article referred to is as follows:

[From the Columbia Journalism Review, Mar./Apr. 1998]

WHERE WE WENT WRONG

(By Jules Witcover)

In the sex scandal story that has cast a cloud over the president, Bill Clinton does not stand to be the only loser. No matter how it turns out, another will be the American news media, whose reputation as truth-teller to the country has been besmirched by perceptions, in and out of the news business, about how the story has been reported.

The indictment is too sweeping. Many news outlets have acted with considerable responsibility, especially after the first few frantic days, considering the initial public pressure for information, the burden of obtaining much of it from sealed documents in

legal proceedings and criminal investigations, and the stonewalling of President Clinton and his White House aides.

But the explosive nature of the story, and the speed with which it burst on the consciousness of the nation, triggered in the early stages a piranha-like frenzy in pursuit of the relatively few tidbits tossed into the journalistic waters by—whom? That there were wholesale leaks from lawyers and investigators was evident, but either legal restraints or reportorial pledges of anonymity kept the public from knowing with any certainty the sources of key elements in the saga.

Into the vacuum created by a scarcity of clear and credible attribution raced all manner of rumor, gossip, and, especially, hollow sourcing, making the reports of some mainstream outlets scarcely distinguishable from supermarket tabloids. The rush to be first or to be more sensational created a picture of irresponsibility seldom seen in the reporting of presidential affairs. Not until the story settled in a bit did much of the reporting again begin to resemble what has been expected of mainstream news organizations.

The Clinton White House, in full damage-control mode, seized on the leaks and weakly attributed stories to cast the news media as either a willing or unwitting collaborator of sorts with independent counsel Kenneth Starr's investigation of alleged wrongdoing by the president. Attacking the independent counsel and his office was a clear diversionary tactic, made more credible to many viewers and readers by suggesting that the overzealous news business, so suspect already in many quarters, was being used by Starr.

Unlike the Watergate scandal of twenty-five years ago, which trickled out over twenty-six months, this scandal broke like a thunderclap, with the direst predictions from the start. Whereas in the Watergate case the word impeachment was unthinkable and not uttered until much later in the game, the prospect of a premature end to the Clinton presidency was heard almost at once. "Is He Finished?" asked the cover line on *U.S. News & World Report*. Not to be outdone, *The Economist* of London commanded, "If It's True, Go."

ABC News's White House correspondent Sam Donaldson speculated on *This Week with Sam and Cokie* on January 25 that Clinton could resign before the next week was out. "If he's not telling the truth," Donaldson said, "I think his presidency is numbered in days. This isn't going to drag out. . . . Mr. Clinton, if he's not telling the truth and the evidence shows that, will resign, perhaps this week."

After Watergate, it was said that the president had been brought down by two reporters, Bob Woodward and Carl Bernstein, and their newspaper, *The Washington Post*, and they were widely commended for it. This time, after initial reporting by Michael Isikoff of *Newsweek*, there was a major piling-on by much of American print and electronic journalism, for which they have been widely castigated. A *Washington Post* poll taken ten days after the story broke found 56 percent of those surveyed believed the news media were treating Clinton unfairly, and 74 percent said they were giving the story "too much attention."

The advent of twenty-four-hour, all-news cable channels and the Internet assured the story of non-stop reportage and rumor, augmented by repeated break-ins of normal network programming and late-night rebashes. Viewing and listening audiences swelled, as did newspaper and magazine circulation, accommodated by special press runs.

Not just the volume but the methodology of the reporting came in for sharp criti-

cism—often more rumor-mongering than fact-getting and fact-checking, and unattributed appropriation of the work and speculation of others. The old yardstick said to have been applied by the *Post* in the Watergate story—that every revelation had to be confirmed by two sources before publication—was summarily abandoned by many news outlets.

As often as not, reports were published or broadcast without a single source named, or mentioned in an attribution so vague as to be worthless. Readers and listeners were told repeatedly that this or that information came from "sources," a word that at best conveyed only the notion that the information was not pure fiction or fantasy. As leaks flew wildly from these unspecified sources, the American public was left as seldom before in a major news event to guess where stories came from and why.

Readers and listeners were told what was reported to be included in affidavits and depositions in the Paula Jones sexual harassment case—information that supposedly was protected by a federal judge's gag order—or presented to independent counsel Starr. Leakers were violating the rules while the public was left to guess about their identity, and about the truth of what was passed on to them through the news media, often without the customary tests of validity.

In retrospect, it was sadly appropriate that the first hint of the story really broke into public view not in *Newsweek*, whose investigative reporter, Isikoff, had been doggedly pursuing for more than a year Paula Jones's allegations that Clinton had made inappropriate sexual advances to her when he was governor of Arkansas.

Rather, it surfaced in the wildly irresponsible Internet site of Matt Drudge, a reckless trader in rumor and gossip who makes no pretense of checking on the accuracy of what he reports. ("Matt Drudge," says Jodie Allen, Washington editor for Bill Gates's online magazine *Slate*, "is the troll under the bridge of Internet journalism.")

Drudge learned that *Newsweek* on Saturday, January 17, with its deadline crowding in, had elected not to publish. According to a February 2 *Newsweek* report, prosecutors working for Starr had told the news-magazine they needed a little more time to persuade former White House intern Monica Lewinsky to tell them about an alleged relationship she had with the president that had implications of criminal conduct.

Early Saturday morning, according to the same *Newsweek* report, the magazine "was given access to" a tape bearing conversations between Lewinsky and her friend Linda Tripp. But the *Newsweek* editors held off. Opting for caution of the sort that in earlier days was applauded, they waited.

The magazine also reported that publication was withheld because the tapes in themselves "neither confirmed nor disproved" obstruction of justice, because the magazine had "no independent confirmation of the basis for Starr's inquiry," and because its reporters had never seen or talked with Lewinsky "or done enough independent reporting to assess the young woman's credibility." If anything, such behavior if accurately described resonated with responsibility, although holding back also left *Newsweek* open to speculation by journalists that its action might have been a quid pro quo for information received.

Drudge, meanwhile, characteristically feeling no restraints, on Monday morning, January 19, jumped in and scooped *Newsweek* on its own story with a report that the news-magazine had "spiked" it after a "screaming fight in the editors' offices" on the previous Saturday night. Isikoff later said "there was a vigorous discussion about what was the

journalistically proper thing to do. There were no screaming matches."

Drudge was not without his defenders. Michael Kinsley, the editor of *Slate*, argued later that "the Internet beat TV and print to this story, and ultimately forced it on them, for one simple reason: lower standards. . . . There is a case to be made, however, for lower standards. In this case, the lower standards were vindicated. Almost no one now denies there is a legitimate story here." Kinsley seemed to harbor the crazy belief that had Drudge not reported that *Newsweek* had the story, the news-magazine never would have printed it the next week, and therefore the Internet could take credit for "forcing" the story on the mainstream news media.

Newsweek, not going to press again until the next Saturday, finally put the story on its America Online site on Wednesday, January 21, after *The Washington Post* had broken it on newsstands in its early Wednesday edition out Tuesday night, under the four-column banner atop page one CLINTON ACCUSED OF URGING AIDE TO LIE. The story was attributed to "sources close to the investigation." ABC News broadcast the gist of it on radio shortly after midnight Wednesday.

The *Los Angeles Times* also had the story in its Wednesday editions, but *The New York Times*, beaten badly by the *Post* on the Watergate story a quarter of a century earlier, was left at the gate again. The lead on its first story on Thursday, January 22, however, was a model of fact: "As an independent counsel issued a fresh wave of White House subpoenas, President Clinton today denied accusations of having had a sexual affair with a twenty-one-year-old White House intern and promised to cooperate with prosecutors investigating whether the president obstructed justice and sought to have the reported liaison covered up."

The story spread like an arsonist's handiwork. The *Washington Post* of Thursday reported from "sources familiar with the investigation" that the FBI had secretly taped Lewinsky by placing a "body wire" on Tripp and had got information that "helped persuade" Attorney General Janet Reno to ask for and receive from the three-judge panel overseeing the independent counsel authorization to expand the investigation.

On that same Thursday, the *Times* identified Lucianne Goldberg, the literary agent who later said she had advised Tripp to tape her conversations with Lewinsky. But *The Washington Post* continued to lead the way with more information apparently leaked by, but not attributed specifically to, lawyers in the case, and in the Paula Jones sexual harassment lawsuit that had caught Lewinsky in its web.

On network television on Friday, taste went out the window. ABC News correspondent Jackie Judd reported that "a source with direct knowledge of" Lewinsky's allegations said she "would visit the White House for sex with Clinton in the early evening or early mornings on the weekends, when certain aides who would find her presence disturbing were not at the office." Judd went on: "According to the source, Lewinsky says she saved, apparently as a kind of souvenir, a navy blue dress with the president's semen stain on it. If true, this could provide physical evidence of what really happened."

That phrase "if true" became a gate-opener for any rumor to make its way into the mainstream. Judd's report ignited a round of stories about a search for such a dress. Despite disavowals of its existence by Lewinsky's lawyer, William Ginsburg, stories soon appeared about a rumored test for tele-tale DNA by the FBI.

The *New York Post*, under the headline Monica kept sex dress as a souvenir, quoted

"sources" as saying the dress really was "a black cocktail dress that Lewinsky never sent to the cleaners," adding that "a dress with semen on it could provide DNA evidence virtually proving the man's identity—evidence that could be admissible at trial." The newspaper also reported that "Ken Starr's investigators searched Lewinsky's Watergate apartment, reportedly with her consent and carried off a number of items, including some clothing," which Ginsburg subsequently confirmed. He later said that the president had given Lewinsky a long T-shirt, not a dress.

The Village Voice, in a scathing retracing of the path taken by the ABC News report of a semen-stained dress, labeled Judd's account hearsay and noted it had nevertheless been picked up by other news organizations as if such a dress existed. Six days after the original ABC story, CBS News reported that "no DNA evidence or stains have been found on a dress that belongs to Lewinsky" that was "seized by the FBI from Lewinsky's apartment" and tested by "the FBI lab."

ABC, the next day reported that "according to law enforcement sources, Starr so far has come up empty in a search for forensic evidence of a relationship between Mr. Clinton and Lewinsky. Sources say a dress and other pieces of clothing were tested, but they all had been dry cleaned before the FBI picked them up from Lewinsky's apartment." In this comment, ABC implied that there had been stains, and it quoted a ABC spokesperson as saying, "We stand by that initial report" of a semen-stained dress.

A close competitor for the sleaziest report award was the one regarding the president's alleged sexual preference. On Wednesday, January 21, the Scripps Howard News Service reported that one person who has listened to the Lewinsky-Tripp tapes said Lewinsky "described how Clinton allegedly first urged her to have oral sex, telling her that such acts were not technically adultery."

That night, on ABC News's *Nightline*, Ted Koppel advised viewers gravely that "the crisis in the White House" ultimately "may come down to the question of whether oral sex does or does not constitute adultery." The question, he insisted, was neither "inappropriate" nor "frivolous" because "it may bear directly on the precise language of the president's denials. What sounds, in other words, like a categorical denial may prove to be something altogether different."

Nightline correspondent Chris Bury noted Clinton's "careful use of words in the matter of sex" in the past. He recalled that in 1992, in one of Gennifer Flowers' taped conversations offered by Flowers in her allegations of a long affair with the then governor of Arkansas, she "is heard discussing oral sex with Clinton. Bury went on, "during this same time period, several Arkansas state troopers assigned to the governor's detail had said on the record that Clinton would tell them that oral sex is not adultery."

The distinction came amid much speculation about whether Clinton, in his flat denial of having had "sexual relations with that woman," might be engaging in the sort of semantic circumlocution for which he became notorious in his 1992 presidential campaign when asked about his alleged affair with Flowers, his draft status, smoking marijuana, and other matters.

The Washington Post on Sunday, January 25, reported on the basis of the Tripp tapes that "in more than 20 hours of conversations" with Tripp, "Lewinsky described an eighteen-month involvement that included late-night trysts at the White House featuring oral sex." The story noted in its second paragraph: "Few journalists have heard even a portion of these audio tapes, which include one made under the auspices of the FBI.

Lewinsky herself has not commented on the tapes publicly. And yet they have been the subject of numerous news accounts and the fodder for widespread speculation." Nevertheless, it then added: "Following are descriptions of key discussions recorded on the tapes, information that The Washington Post has obtained from sources who have listened to portions of them."

The story went on to talk of "bouts of 'phone sex' over the lines between the White House and her apartment" and one comment to Tripp in which Lewinsky is alleged to have said she wanted to go back to the White House—as the newspaper rendered it—as "special assistant to the president for [oral sex]." The same story also reported that "Lewinsky tells Tripp that she has an article of clothing with Clinton's semen on it."

On television, these details led some anchors, such as Judy Woodruff of CNN, to preface some reports with the kind of unsuitable-for-children warning usually reserved for sex-and-violence shows like *NYPD Blue*. But comments on oral sex and semen may have been more jarring to older audiences, to whom such subjects have been taboo, than to viewers and readers from the baby boom and younger.

The tabloids were hard-pressed to outdo the mainstream, but they were up to the challenge. Borrowing from *The Sun* of London, the *New York Post* quoted Flowers in an interview saying "she reveals that Clinton once gave her his 'biblical' definition of oral sex: 'It isn't 'real sex.'" The headline on the story helped preserve the *Post's* reputation: *Gospel According to Bubba says oral sex isn't cheating.*

Meanwhile, the search for an eyewitness to any sexual activity between Clinton and Lewinsky went on. On Sunday, January 25, Judd on ABC reported "several sources" as saying Starr was investigating claims that in the spring of 1996, the president and Lewinsky "were caught in an intimate encounter" by either Secret Service agents or White House staffers. The next morning, the front-page tabloid headlines of both the *New York Post* and the *New York Daily News* shouted, caught in the act, with the accompanying stories attributed to "sources."

Other newspapers' versions of basically the same story had various attributions: the *Los Angeles Times*: "people familiar with the investigation"; *The Washington Post*: "sources familiar with the probe"; *The Wall Street Journal*: "a law enforcement official" and "unsubstantiated reports." The *Chicago Tribune* attributed ABC News, using the lame disclaimer "if true" and adding that "attempts to confirm the report independently were unsuccessful." The *New York Times*, after considering publication, prudently decided against it.

Then on Monday night, January 26, *The Dallas Morning News* reported in the first edition of its Tuesday paper and on its Web site: "Independent counsel Kenneth Starr's staff has spoken with a Secret Service agent who is prepared to testify that he saw President Clinton and Monica Lewinsky in a compromising situation in the White House, sources said Monday." The story, taken off the Internet by *The Associated Press* and put on its wire and used that night on *Nightline*, was retracted within hours on the ground that its source had told the paper that the source had been mistaken (see box, page 21).

Then there was the case of the television talk show host, Larry King, referring to a *New York Times* story about a message from Clinton on Lewinsky's answering machine—when there was, in fact, no such story. Interviewing lawyer Ginsburg the night of January 28, King told his guest that the story would appear in the the next day's paper, only to report later in the show: "We have a

clarification, I am told from our production staff. We may have jumped the gun on the fact that *The New York Times* will have a new report on the phone call from the president to Monica Lewinsky, the supposed phone call. We have no information on what *The New York Times* will be reporting tomorrow."

Beyond the breakdown in traditional sourcing of stories in this case, not to mention traditional good taste, was the manner in which a questionably sourced or totally unsourced account was assumed to be accurate when printed or aired, and was picked up as fact by other reporters without attempting to verify it.

For days, a report in *The Washington Post* of what was said to be in Clinton's secret deposition in the Paula Jones case was taken by the press as fact and used as the basis for concluding that Clinton had lied in 1992 in an interview on *60 Minutes*. Noting that Clinton had denied any sexual affair with Gennifer Flowers, the *Post* reported that in the deposition Clinton acknowledged the affair, "according to sources familiar with his testimony."

Loose attribution of sources abounded. One of the worst offenders was conservative columnist Arianna Huffington. She offered her view on the CNBC talk show *Equal Time* that Clinton had had an affair with Shelia Lawrence, the widow of the late ambassador whose body was exhumed from Arlington National Cemetery after it was revealed he had lied about his military record. Huffington, in reporting on the alleged affair, confessed that "we're not there yet in terms of proving it." So much for the application of journalistic ethics by journalistic amateurs.

With CNN and other twenty-four-hour cable outlets capable of breaking stories at any moment and Internet heist artists like Drudge poised to pounce on someone else's stories, it wasn't long before the Internet became the venue of first resort even for a daily newspaper. *The Wall Street Journal* on February 4, ready with a report that a White House steward had told a grand jury summoned by Starr that he had seen Clinton and Lewinsky alone in a study next to the Oval Office, posted the story on its World Wide Web site and its wire service rather than wait to break it the next morning in the *Journal*. In its haste, the newspaper did not wait for comment from the White House, leading deputy press secretary Joe Lockhart to complain that "the normal rules of checking or getting a response to a story seem to have given way to the technology of the Internet and the competitive pressure of getting it first."

The Web posting bore the attribution "two individuals familiar with" the steward's testimony. But his lawyer soon called the report "absolutely false and irresponsible." *The Journal* that night changed the posting to say the steward had made the assertion not to the grand jury but to "Secret Service personnel." The story ran in the paper the next day, also saying "one individual familiar with" the steward's story "said that he had told Secret Service personnel that he found and disposed of tissues with lipstick and other stains on them" after the Clinton-Lewinsky meeting. Once again, a juicy morsel was thrown out and pounced on by other news outlets without verification, and in spite of the firm denial of the *Journal* report from the steward's lawyer.

One of the authors of the story, Brian Duffy, later told *The Washington Post* the reason the paper didn't wait and print an exclusive the next morning was because "we heard footsteps from at least one other news organization and just didn't think it was going to hold in this crazy cycle we're in." In such manner did the race to be first take

precedence over having a carefully checked story in the newspaper itself the next day.

White House press secretary Michael McCurry called the *Journal's* performance "one of the sorriest episodes of journalism" he had ever witnessed, with "a daily newspaper reporting hour-by-hour" without giving the White House a chance to respond. *Journal* managing editor Paul Steiger replied in print that "we went with our original story when we felt it was ready" and "did not wait for a response from the White House" because "it had made it clear repeatedly" it wasn't going to respond to any questions about any aspect of the case.

Steiger said at that point that "we stand by our account" of what the steward had told the Secret Service. Three days later, however, the *Journal* reported that, contrary to its earlier story, the steward had not told the grand jury he had seen Clinton and Lewinsky alone. Steiger said "we deeply regret our erroneous report of the steward's testimony."

On a less salacious track, the more prominent mainstream dailies continued to compete for new breaks, relying on veiled sources. *The New York Times* contributed a report on February 6 that Clinton had called his personal secretary, Betty Currie, into his office and asked her "a series of leading questions such as: 'We were never alone, right?'" The source given was "lawyers familiar with her account."

The *Post*, "scrambling to catch up," as its media critic Howard Kurtz put it, shortly afterward confirmed the meeting "according in a person familiar with" Currie's account. Saying his own paper used "milder language" than the *Times* in hinting at a motivation of self-protection by the president, Kurtz quoted the *Post* story that said "Clinton probed her memories of his contacts with Lewinsky to see whether they matched his own." In any event, Currie's lawyer later said it was "absolutely false" that she believed Clinton "tried to influence her recollection."

The technology of delivery is not all that has changed in the reporting of the private lives of presidents and other high-ranking officeholders. The news media have traveled light years from World War II days and earlier, when the yardstick for such reporting was whether misconduct alleged or proved affected the carrying out of official duties.

In 1984, when talk circulated about alleged marital infidelity by presidential candidate Gary Hart, nothing was written or broadcast because there was no proof and no one willing talk. In 1987, however, a *Newsweek* profile reported that his marriage had been rocky and he had been haunted by rumors of womanizing. A tip to *The Miami Herald* triggered the stake out of his Washington townhouse from which he was seen leaving with Donna Rice. Only after that were photographs of the two on the island of Bimini displayed in the tabloid *National Enquirer* and Hart was forced from the race. Clearly, the old rule—that questions about a public figure's private life were taboo—no longer applied.

But the next time a Presidential candidate ran into trouble on allegations of sexual misconduct—Bill Clinton in 1992—the mainstream press was dragged into hot pursuit of the gossip tabloids that not too many years earlier had been treated like a pack of junkyard dogs by their supposedly ethical betters. The weekly supermarket tabloid, *Star*, printed a long, explicit first-person account of Flowers' alleged twelve-year affair with Clinton. Confronted with the story on the campaign trail in New Hampshire, Clinton denied it but went into extensive damage control, culminating in his celebrated 60 *Minutes* interview. With the allegations

quickly becoming the centerpiece of his campaign, the mainstream press had no recourse but to report how he was dealing with it. Thus did the tail of responsible journalism come to wag the dog.

From then on, throughout Clinton's 1992 campaign and ever since, the once-firm line between rumor and truth, between gossip and verification, has been crumbling. The assault has been led by the trashy tabloids but increasingly accompanied by major newspapers and television, with copy-cat tabloid radio and TV talk shows piling on. The proliferation of such shows, their sensationalism, bias and lack of responsibility and taste have vastly increased the hit-and-run practice of what now goes under the name of journalism.

The practitioners with little pretense to truth-telling or ethics, and few if any credentials suggesting journalistic training in either area, now clutter the airwaves, on their own shows (Watergate felon G. Gordon Liddy, conspiracy-spinner Rush Limbaugh, Iran-Contra figure Oliver North) or as loud mouth hosts and guests on weekend talkfests (John McLaughlin, Matt Drudge).

In the print press and on the Internet as well, journalism pretenders and poseurs feed misinformation, speculation, and unverified accusations to the reading public. The measure of their success in polluting the journalism mainstream in the most recent Clinton scandal was the inclusion of Drudge, as a guest analyst on NBC News' *Meet the Press*. The program also included Isikoff, the veteran *Newsweek* investigative reporter.

Playing straight man to Drudge, moderator Tim Russert asked him about "reports" that there were "discussions" on the Lewinsky tapes "of other women, including other White House staffers, involved with the president." The professional gossip replied, dead-pan: "There is talk all over this town another White House staffer is going to come out from behind the curtains this week. If this is the case—and you couple this with the headline that the *New York Post* has, [that] there are hundreds, hundreds [of other women] according to Miss Lewinsky, quoting Clinton—we're in for a huge shock that goes beyond the specific episode. It's a whole psychosis taking place in the White House."

Drudge officiously took the opportunity to lecture the White House reporters for not doing their job. He expressed "shock and very much concern that there's been deception for years coming out of this White House. I mean, this intern relationship didn't happen last week. It happened over a course of year and a half, and I'm concerned. Also, there's a press corps that wasn't monitoring the situation close enough." Thus spoke the celebrated trash-peddler while Isikoff sat silently by.

Such mixing of journalistic pretenders side-by-side with established, proven professional practitioners gives the audience a deplorably disturbing picture of a news business that already struggles under public skepticism, cynicism, and disaffection based on valid criticism of mistakes, lapses, poor judgment, and bad taste. The press and television, like the Republic itself, will survive its shortcomings in the Lewinsky affair, whether or not President Clinton survives the debacle himself. The question is, has the performance been a mere lapse of standards in the heat of a fast-breaking, incredibly competitive story of major significance? A tapering off of the mad frenzy of the first week or so of the scandal gives hope that this is the case.

Or does it signal abandonment of the old in favor of a looser regard for the responsibility to tell readers and listeners where stories come from, and for standing behind the ve-

racity of them? It is a question that goes to the heart of the practice of a trade that, for all its failings, should be a bulwark of a democracy that depends on an accurately informed public. Journalism in the late 1990s still should be guided by adherence to the same elemental rules that have always existed—report what you know as soon as you know it, not before. And if you're not sure wait and check it out yourself.

Those news organizations that abide by this simple edict, like a disappointed *Newsweek* in this instance, may find themselves run over by less scrupulous or less conscientious competitors from time to time. But in the long run they will maintain their own reputations, and uphold the reputation of a craft that is under mounting attack. To do otherwise is to surrender to the sensational, the trivial and the vulgar that is increasingly infecting the serious business of informing the nation.

WHAT WE DO NOW

(By the editors of CJR)

Regardless of who ultimately wins or loses, regardless of who is judged right or wrong, regardless of the fate of William Jefferson Clinton—or Monica Lewinsky or Kenneth Starr—what will matter mightily to journalists are the long-lasting lessons that we learn from this lamentable and depressing affair.

However the scandal turns out, the press stands to lose in the court of public opinion. In a Pew Research Center poll of 844 people taken from January 30 to February 2, nearly two-thirds said the media had done only a fair or poor job of carefully checking the facts before reporting this story; 60 percent said the media had done only a fair or poor job of being objective on the story and 54 percent thought the press put in another fair or poor performance in providing the right amount of coverage. "The rise of Clinton's popularity in the polls is in part a backlash against the press," said Andrew Glass, Cox Newspapers' senior correspondent. "One way the people can say that the press has been too critical is to tell the pollsters that they support Clinton."

If the president should fall, then those who jumped the gun, who ran with rumor and innuendo, who published or broadcast phony reports without eventual retraction, will falsely claim vindication and triumph. And if this president should persevere and prevail, many in the public will be convinced that the press and the independent counsel were in some unholy conspiracy to persecute him. Remember that the Clinton controversy is only the latest in a string of stories—Diana, O.J., Versace—that the press has been widely accused of exploiting. Says *Los Angeles Times* editor Michael Parks: "We're good at wretched excess, at piling on."

The preceding article targeted where parts of the press have gone wrong in reporting the White House crisis, and leads to these further conclusions:

Competition has become more brutal than ever and has spurred excess. TV newsmagazines are now viewed by traditional print newsmagazines as direct competitors. Thus, says Michael Elliott, editor of *Newsweek International*. "The proliferation of TV news shows makes it harder for us to delay the release of a story." With the spread of twenty-four-hour all-news cable channels—CNN, MSNBC, Fox—there's pressure to report news even when there isn't any. In a remarkably prescient statement last year to the Catto Conference on Journalism and Society, former TV newsman Robert MacNeil said: "I tremble a little for the next sizable crisis with three all-news channels, and scores of other cable and local broadcasters, fighting

for a share of the action, each trying to make his twist on the crisis more dire than the next."

The Internet has speeded the process and lowered quality by giving currency to unreliable reports. When a story is posted on the Internet, it races around the globe almost instantly. But the Internet has no standards for accuracy. Web gossipist Matt Drudge once claimed only an 80 percent accuracy rate—wholly unacceptable under any journalistic standards. Technology, long the journalist's great and good friend, has turned out to be a dangerous mistress. "The Internet is a gun to the head of the responsible media," says Jonathan Fenby, editor of the *South China Morning Post* in Hong Kong. "If you choose not to report a story, the Internet will."

As journalism speeds up, there is less time to think, to ponder, to edit, to judge, to confirm, to reconsider. Never was there greater need for gatekeepers with sound and unimpassioned editorial judgment who refuse to be stampeded in the pressure of competition.

And never was there a better time to start examining what journalists can do, immediately, to improve and recapture public respect.

A major step, surely, would be to resolve to make abundantly clear in the reporting of every fast-breaking or controversial story what is known fact and what is mere speculation—or better yet, to swear off disseminating speculation at all except as it can be fully attributed to a knowledgeable source. And to forgo cannibalizing the stories of other news outfits—whether mainstream or tabloid—and to refrain from merely retransmitting them on their face value, without independent reporting.

Clearly, every news organization needs to establish its own written guidelines for almost every conceivable coverage situation. Many already have them. In Britain, the BBC has a thick book containing policies for everything from covering elections to interviewing terrorists to determining when the people's right know supersedes what may constitute invasion of privacy. The BBC's dedication to the two-source rule caused anchorman Nik Gowing to fill forty excruciating minutes of airtime last August—awaiting confirmation by a second source of Princess Diana's death—before broadcasting the news.

Journalists must more freely and fully admit—and quickly correct—their errors. More gross missteps were committed in the early stages of the Clinton scandal than in all of Watergate. Just one example: All of those "sightings" of the president in intimate situations with Ms. Lewinsky in the White House as reported, variously, by ABC News, The Dallas Morning News, and The Wall Street Journal. As *cjr* went to press, not one had been confirmed.

Newspersons must have the courage to stand up to their editors, news directors, and other bosses when the need arises—and refuse to take a story beyond where sound journalistic principles allow.

In short, the time has come for a thoughtful and uncompromising reappraisal—time to stand back and recall the fundamentals that once made the free press of America the envy of the world. We asked a sampling of journalists and media analysts for their views on what lessons the profession ought to learn from the Clinton scandal story, and where we go from here:

Walter Isaacson, managing editor, *Time*: We're in a set of rooms where we've never been before. It's murky, and we keep bumping into the furniture. But this is a very valid story of a strong-willed prosecutor and a president whose actions have been legiti-

mately questioned. Reporters must be very careful to stick to known facts, but not be afraid to cover the story. A case involving sex can be a very legitimate story, but we can't let our journalistic standards lapse simply because the sexual element makes everybody over-excited. One lesson is, in the end, you're going to be judged on whether you got it right, not just on whether you got it first.

Richard Wald, senior vice president, ABC News: There are, at least, three lessons.

One: when you are dealing with the president and sex, you must be extremely precise in how you say what it is you think you know. When carefully phrased stories that we ran on ABC were picked up by other news organizations, nobody said: "ABC News reports they got the story from source A or source B." They simply reported it as fact. It then gets into the public vocabulary as fact rather than as allegation.

Two: People dislike the messenger but like the message. If you believe the polls, the public is annoyed with the media and doesn't want to hear about this story anymore. On the other hand, they're buying a lot of newspapers and driving up the ratings of twenty-four-hour news channels. If you believe surveys that ask people what they watch on TV, PBS is the highest rated network in the world. And ballet is huge.

Three: We all get tarred with the excesses of a few. Some TV news organizations rush onto the air with bulletins that don't mean anything. Some newspapers plaster stuff over page one that's really quite minor. Each tiny advance in the story is treated like a journalistic triumph. But the bulk of the reporting has been reasonable and in context.

Marvin Kalb, director, The Shorenstein Center on the Press, Politics and Public Policy, Harvard University: Check the coverage of the O.J. trials; the Versace/Cunanan saga, Princess Diana's tragic death. With each burst of excessive, shallow, intrusive, and hardly uplifting electronic herd journalism, there has been the promise that next time it would get better. The new technology and the new economics have combined to produce a new journalism, which has bright spots but is marked by murky questions about ethics, slipping standards, and quality.

James Fallows, editor, *U.S. News & World Report*: When this whole thing is over, we'll be wringing our hands in symposia and post-mortem critiques. The trick would be to keep some of that retrospective view in mind while we're in the middle of covering the story. A year from now people will be saying:

"That we shouldn't have let this story blot out so much else of the news, as happened with O.J. and Diana and Flight 800.

"That we should have avoided some of the flights of fancy that come with ever-escalating hypothetical questions. ("If it is proven that Monica Lewinsky killed Vince Foster, then . . .?")

"That we should have been more skeptical about single-source anonymous reports—and made the possible motive of leakers clearer to our readers.

"That we should have found some way to retain the proper function of editorial judgment, i.e., waiting to see when there is enough basis to publish a story—rather than just saying: "It's on the Internet, it's 'Out there.'"

"That we should have recognized that we're in a morally complex situation when it comes to dealing with leaks—one where we really need consider the inherent rights and wrongs. The point is: why wait until next year before trying to let such concerns shape our coverage?

Anthony Lewis, columnist, *The New York Times*: The serious press has an obligation to stand back and warm the reader about how

thin is the basis for many of these stories. It's a disgrace what the papers are doing in terms of sourcing.

The obsession of the press with sex and public officials is crazy. Still, after Linda Tripp went to the prosecutor, it became hard to say we shouldn't be covering this. My criticism is in the way it was covered. In general, the press started out rather gullible as regards the Starr operation, and has caught up. The public's been way ahead.

William Marimow, managing editor, the Baltimore *Sun*: When a story is sensitive and controversial, you don't go into print until you've done everything possible to interview people on both sides of the issue, until you understand their accounts of what happened. If you're going to report that "sources" said a White House butler saw the president and intern in a "compromising situation," you ought to go to the ends of the earth to get the point of view of the butler, the president, the intern, and their attorneys.

Geneva Overholser, ombudsman, The Washington Post: Again and again, readers complained about how much we in the press have been reporting from anonymous sources that just seems like gossip. And that is, in fact, inexcusable. We aren't clear enough [in our reports] about the possible motivations of these sources. It's not that we can't have anonymous sources, but each one costs us something in credibility.

And we're too loose with language. One story quoted a source as saying that in her written proffer Monica Lewinsky had "acknowledged" having sex with the president. But she may have "asserted" it rather than "acknowledged" it. We can't use language that hangs somebody before the facts are out.

The Washington Post conceded that one of its articles was based on sources who had heard the [Lewinsky-Tripp] tapes, not on a hearing of the tapes by the reporter. Yet there were quotes around the president's alleged words to Lewinsky—"You must deny this." Here's an anonymous source paraphrasing a woman who is characterizing the words of the president to her on tapes made without her knowledge.

Deni Elliott, director, Practical Ethics Center, University of Montana and professor in the university's philosophy and journalism departments: In the Monica Lewinsky stories in the February 16 Newsweek, there are at least thirty instances in which information is either not attributed, or attributed to anonymous sources, or attributed to other news organizations.

News organizations have not differentiated between different kinds of leaks. Leaks of grand jury testimony create information that ought not be disclosed unless it can be explained that the information is so important that the leak is justified. Grand juries have great latitude and are supposed to operate secretly because of that latitude. If information looks like grand jury testimony but is not, the reader should be informed, or readers will be led to believe you can't trust in grand jury secrecy.

Peter Prichard, president, Freedom Forum, former editor, USA Today: One big lesson: never let hypercompetition take precedence over good news judgment. And be alert to the possibility that you're being manipulated. Also: One anonymous source on any story is simply not enough. The speed of news cycles these days has resulted in errors, but generally the coverage has been good. Newspapers have done a better job than television.

Thomas E. Patterson, Bradlee Professor of Government and the Press, Harvard's John F. Kennedy School of Government: It's not hard to identify the standards we ought to have, it's just hard to get everybody on

board. It's going to take real leadership—strong voices, editors, reporters who are willing to stand up to management.

There isn't much real self-criticism among journalists. There has been a flurry of it in the current scandal because so many stories were so outrageous. But where is the same kind of scrutiny the press gives everyone else—really hammering away? These flurries blow over and six months later they're forgotten. Journalists have to say, "Here's an example of the kinds of things we don't do"—and then don't do it. And if journalists do do it, someone must tell them. "You're violating the standards of your profession. Stop it."

Anthony Marro, editor, *Newsday*: Before self-examination moves into self-flagellation, let's look at the lessons here:

With the blur that results when television viewers can switch from the CBS Evening News to *Hard Copy*, *Larry King Live*, and *Geraldo*, it's more important than ever for journalists to sort out: What are unproven allegations and what are proven facts? Which facts are criminal and impeachable and which are merely embarrassing? And what information is coming from serious journalism and what is coming from entertainment programs that have some of the trappings of journalism but few of the standards?

All life is Rashomon, as we seen in early reports on the testimony of [Clinton's personal secretary] Betty Curries, in which two of the nation's very best newspapers produced two very different stories from pretty much the same bits of information. The *New York Times* gave something very much like a prosecutor's view of the incident (i.e., Clinton was coaching here to lie) while *The Washington Post* gave something very much like a defense lawyer's view (i.e., Clinton was just trying to refresh his memory about his meetings with Monica Lewinsky). Sorting this out can be both difficult and time-consuming and no one should expect the press even at its best to come up with quick and conclusive answers.

Reporters need to keep reminding themselves that just because sources say they've obtained information doesn't mean that they've obtained all of it, or that it's fully corroborated, or that it means precisely what they suggest it means.

James O'Shea, deputy managing editor news, *Chicago Tribune*: We're in a new world in terms of the way information flows to the nation. The days when you can decide not to print a story because it's not well enough sourced are long gone. When a story get into the public realm, as it did with the *Drudge Report*, then you have to characterize it, you have to tell your readers, "There is out there, you've probably been hearing about it on TV and the Internet. We have been unable to substantiate it independently." And then give them enough information to judge the validity of it.

Not reporting it all is the worst thing you can do because you create a vacuum in which people begin thinking a story is true and you're not reporting it because you're a backer of the president. One of the most popular things we did was run a big chart in our Sunday paper that told what's been reported, what is known, and what is not known. We delineated, trying to separate fact from fiction and readers responded very well. The trouble with not reporting anything at all until it's substantiated is that you're not distinguishing between fact and fiction, and then fiction wins.

AND WHAT WILL HISTORY SAY?

(By Lance Morrow)

It's fascinating, in all of this, to look at the trajectory of the Baby Boomers. In their

experience, the presidency was enacted first as tragedy. Now it plays itself out as farce.

The sixties—the country that Bill Clinton came from, the culture that formed him and his generation—was a carnival of the tragic, with bodies every where. Clinton's Rose Garden hero, John Kennedy, was murdered in Dallas. Lyndon Johnson led the nation into the lost war that eventually killed 58,000 Americans and more than a million Vietnamese, that ruined the Great Society and tore America in two. Johnson collapsed upon the stage like *King Lear* in the fifth act, and six years later, Watergate (that is, scandals arising from the American civil war over Vietnam) forced Richard Nixon out of the White House as well. Large, Shakespearean themes: assassinations, war, usurpation of power.

In nineties America—the country over which the quintessential boomer presides—we see a good-times presidency brought to peril by . . . fellatio with an intern. A hilariously degrading spectacle, but at worst, perhaps a shame, in a society that is only incompletely vulnerable to shame.

Journalists should pay attention to an interesting theme that runs through the continuum from sixties to nineties. In both the tragedy and the farce, one notices the central, corrupting role of liars and lies (about Vietnam, about Watergate, about sex) and therefore a concomitant, sometimes illogical ebb and flow of public trust in the president, and in the media. In the sixties, Lyndon Johnson squandered the moral authority of the presidency. Looking at Clinton's astonishing approval ratings last month, it seemed to be the media that had at last exhausted their credibility.

Are Americans very good judges of character? Short-term, their verdicts naturally tend to be astigmatic. But Americans seemed to have decided that short-term media judgments are even worse: sensational and even hysterical. So citizens may let the president off by a process much like jury nullification.

Journalists cannot help speculating on what will be the ultimate verdict on Clinton. Close up, he seems to represent an oddly contemporary discontinuum of effective leadership and breezy squalor. But Americans disconnected their judgment of Clinton's moral behavior from their opinion of his job performance.

History is holistic only in the lives of the saints. Otherwise, the disconnects and ambiguities prevail. Perhaps we journalists should not ask, what place a president will occupy in history, but should try to anticipate the eventual range of ambiguity about him. How widely separated will be the good-bad spectrum of his reputation? As a people, our judgments, after all, run to extremes. Was Jefferson democracy's icon of Enlightenment? Or a slave-owning hypocrite?

Harry Truman: a squalid mediocrity? So he seemed close up. His approval rating in polls at the end of his presidency was 23 percent, an all-time low. Longer range, the second verdict prevailed: Truman as tough, spunky hero of plain folks, common sense, give-'em-hell underdog democracy.

Eisenhower: somnambulating geezer of good times, or historian Fred Greenstein's cunning "hidden hand" president, a kind of Zen hero of all the trouble that did not happen? Reagan the clueless? Reagan the visionary?

In early February, ABC's Sam Donaldson, wondering on-camera about Clinton's high ratings amid squalid charges, remembered the story of Lincoln's reaction when told that Ulysses Grant, his most effective general, was a drunk. Lincoln is said to have replied: "Find out what he drinks, and send my other generals a case of it." But of course, as

Donaldson did not say, Ulysses Grant went on to preside over one of America's most corrupt administrations.

What will be the range of ambiguity in history's judgment of Clinton? Maybe he will be thought to be innocent of the sexual stories that are told about him. Maybe I am the queen of Rumania. Maybe the accusations don't matter anyway. Paul Johnson, a conservative author, thinks that history will remember Clinton as a mediocrity clinging to a rung just below Chester A. Arthur.

Or will Clinton be recalled by both journalists and historian as a brilliant politician and admirable president who worked hard, caringly, sensibly, to trim and tune post-ideological government and to preside over one of the most successful, prosperous eras of American history—the baby boomers' middle-aged payoff?

Someone may eventually fit all of this into a Unified Field Theory of Media. So far, we know this: the media in the hard markets of multicultural democratic pluralism, make their living on the excitements of discontinuous reality. At the low end that means the checkout-counter view of public lives (a view that is not necessarily inaccurate). The problem is that, dumbing down, we have too often abandoned the high end. A falling tide leaves all boats in the mud.

In the third week of February, as CJR went to press, the Clinton-Starr story was changing from day to day. One saw the possibility that it might lead to unendurable mess and resignation. Or alternatively, that the story might subside into chronic soap opera and eventually be canceled due to low ratings. A scandal must keep surpassing itself or lose its audience. A sunny presidency of denial might tootle on across the bridge to the twenty-first century.

FUMBLE IN DALLAS

(By Terry Anderson)

"We discovered through the unraveling of a source that we had messed up," laments Ralph Langer, editor of the *Dallas Morning News*. "We had a bad procedure for vetting sources out of the Washington bureau."

On Sunday, January 25, ABC News reported there had been a witness to an intimate encounter between President Clinton and Monica Lewinsky in the White House. On Monday, the *Morning News* reported a similar story, quoting both ABC and a "White House source." In the first edition of the Tuesday morning paper, the *News* fleshed out the story: A Secret Service agent had seen President Clinton and Lewinsky in a "compromising situation" in the White House, and the agent had agreed to cooperate with special prosecutor Kenneth Starr. "This person is now a government witness," the paper quoted its source. A second source confirmed the report.

Within minutes, *The Associated Press* picked up the story, adding the fruits of its own investigations. "We had been working on the ABC report all day Monday, but had no luck," says the AP's Washington bureau chief, Jonathan Wolman. "But we didn't just pick up the *Morning News*'s story. We added quotes from senior officials of the Secret Service saying they'd investigated the report and had doubts about it. And we had David Kendall, the president's personal lawyer, calling it 'false and malicious.'"

The qualifications were appropriate. Even as the *Dallas* paper's first edition hit the streets, the primary source of the story called back saying he had got it wrong. In the ninety minutes between the first and second editions, Langer pulled the story. An urgent retraction was posted on the paper's Web site. The AP quickly issued the much-hated "Bulletin Kill" to its members, but

that was too late. Many had already printed the piece, and had to wait for the next day to carry the AP's follow-up explanation.

The Morning News's blunder was easily identified. "We require two independent sources [on major stories]," Langer explained, "and an editor has to know who the sources are." So far, so good. While the Tuesday story quoted only one source, a "Washington lawyer familiar with the negotiations," the paper actually had another that it did not reveal, and even a third on a "tell me if I shouldn't print this" basis, according to Langer. When the primary source backed out, Langer checked the second source. He found that source had thought he was confirming the vaguer story the Morning News had carried on Monday, not the more specific Tuesday version.

As all this unfolded, the Monday editions of the New York Post and the New York Daily News splashed identical frontpage headlines, Caught in the Act. Each quoted only "sources," without further elaboration. The Washington Post and the Los Angeles Times ran similar reports from their own sources. The Wall Street Journal did the same. Of course, there is no way short of a public unmasking to tell if all these publications' sources were separate individuals or the same (busy) people talking to all of them. Meanwhile, on television newscasts, the story lost its qualifications, drifting toward a concreteness that still had not been justified.

The Morning News, strangely enough, later insisted that its original story was mainly correct, and that the mistakes involved only "nuances." "We thought we had two sources saying a Secret Service agent was negotiating for access to Starr, had gotten it and had talked to Starr's camp," Langer says. "Our source bailed out because it was a 'former or present agent'—a nuance, and, second, the negotiations to get this person to Starr were complex, and mediators were involved. The basic facts of a Secret Service agent, past or present, being put in touch with Starr was correct." But Langer also downgraded the "compromising situation" of Clinton and Lewinsky to an "ambiguous" one—a much more important shift.

Darrell Christian, AP managing editor, says the changes, especially the less damning description of the position Lewinsky and Clinton were caught in involved more than nuances. "When they [the Dallas Paper] withdrew the story and said those details were inaccurate, we thought we had no choice but to take it off the wire."

As CJR went to press, no news organization had been able to confirm any part of the story beyond doubt. No present or former agent had been named. No journalist had claimed direct contact with him or her.

So, Langer was asked, is the story true? "Tough questions. I can't personally answer. People in a position to know are saying it is true, and I don't think they're making it up."

A BREAKDOWN IN FARM COUNTRY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Mr. Speaker, when farmers break down in the field during harvest, they do not have the luxury of hauling their equipment to the shop to wait on time-consuming repairs. Instead, they use the tools they have available at the time, a pliers, a hammer, baling wire, to get the equipment moving again and to get the crop in the bin.

Mr. Speaker, it is harvest time in Kansas, and our markets are having a breakdown. Farmers in Kansas and across America are facing tough times. The wheat harvest is well underway, and while the yields have been satisfactory, farmers are facing the lowest prices in recent memory, due in large part to lagging exports of U.S. commodities.

Projections by the U.S. Department of Agriculture forecast agricultural exports declining \$5 billion this year. This decline is having a serious impact on the bottom line for Kansas farm families. Current wheat prices are \$1 lower than those received during the last 2 years.

One of our best chances to lift commodity prices and breathe life into the farm economy is through an aggressive export policy. The House of Representatives today made a significant move in that direction. Today we passed the agricultural appropriation bill for 1999. Under this legislation, the P.L. 480 Food for Peace Program is fully funded at over \$1 billion.

The Export Enhancement Program is fully funded at \$550 million to help combat unfair export subsidies, and the General Sales Manager Program is funded at a level that makes available over \$5 billion of credit guarantees for agricultural exports.

U.S. farmers are clearly the most efficient and can compete with farmers anywhere in the world. They cannot, however, compete with the treasuries of the European Union and other subsidizing countries. U.S. farmers continue to lose markets and market share due to foreign subsidies and unfair trading practices by our competitors. Still, the Clinton administration has refused to use the tools we have available to combat these subsidies and gain negotiating strength to push for that level playing field in future trade negotiations.

Today's action by Congress makes it clear, we are committed to an aggressive trade policy, committed to exports, and committed to American agriculture. Despite the current crisis, the administration has been reluctant to use the Export Enhancement Program for wheat or flour, citing criticism of the program, without offering alternatives or suggestions to make the program more effective.

The fact is that EEP is one of the few export promotion programs that is authorized, funded, and GATT legal. If changes need to be made to the program to make it more effective, these steps can and should be taken by the administration.

With the passage today of the agricultural appropriation bill, Congress, both the House and Senate, have acted to give USDA both the authority as well as the money to aggressively combat trade subsidies by our agriculture competitors.

Mr. Speaker, there is a breakdown in farm country, and it is time for this administration to use the tools, be that

the pliers or the hammer or the baling wire, whatever it takes. Those tools are available. They need to be used, and we need to get our farmers up and running.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Guam (Mr. UNDERWOOD) is recognized for 5 minutes.

(Mr. UNDERWOOD addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. GUTKNECHT) is recognized for 5 minutes.

(Mr. GUTKNECHT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

FOREIGN OPERATIONS FOR FISCAL YEAR 1999

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, the House of Representatives will soon be addressing the foreign operations appropriations bill for fiscal year 1999. Shortly after the July 4 recess members of the Subcommittee on Foreign Operations, Export Financing, and Related Programs will begin marking up this legislation, which determines to a major degree American engagement in a changing world.

I would like to take this opportunity to address an area where I believe American policies, assistance, and investment can make a critical difference in promoting our values of democracy, human rights, and free markets. That is, support for the Republics of Armenia and Nagorno Karabagh.

Mr. Speaker, I served as co-chairman with the gentleman from Illinois (Mr. PORTER) of the Congressional Caucus on Armenian Issues. Our Caucus has 64 members from both sides of the aisle, and I visited Armenia and Nagorno Karabagh, and can tell Members that the need for help is still great, and the potential of Armenia to be a long-term friend and partner of the United States is also great.

The Subcommittee on Foreign Operations, Export Financing, and Related deserves praise for many important provisions in the fiscal year 1998 foreign ops bill. That legislation provided for the first time direct U.S. humanitarian assistance to the people of Nagorno Karabagh. It also established a discretionary spending fund to restore infrastructure and promote regional integration in the Caucasus.

As in previous years, the legislation also earmarked direct aid to the Republic of Armenia. It maintained the section 907 ban on direct aid to Azerbaijan, albeit with some very big exemptions, until that country lifts its blockade of Armenia and Nagorno

Karabagh. In order to build on the progress made last year, I hope my colleagues who serve on the Subcommittee on Foreign Operations, Export Financing, and Related Programs will consider the following proposals.

First, I urge an earmark of not less than \$100 million to Armenia to promote economic development, trade, and increase U.S. investment. Because Armenia is largely cut off from the west due to the Turkish and Azerbaijani blockades, U.S. assistance has played a vital role in helping this small landlocked Nation to survive. Despite the hardships caused by the blockades, Armenia has registered strong economic growth, with the private sector accounting for a large and growing share of GDP.

Furthermore, aid to Armenia is strictly monitored and effectively implemented. Earlier this year Armenia's voters had successful presidential elections, further proof of the impressive development of a multi-party democracy.

I also urge the subcommittee to build upon its historic achievement in the fiscal year 1998 bill to earmark assistance to Nagorno Karabagh at \$20 million. This mountainous Republic is indeed a functioning society, a fact attested to by members of the USAID team that visited Karabagh to conduct a needs assessment pursuant to the fiscal year 1998 bill.

Unfortunately, our State Department has apparently interpreted the provision of aid to the victims of the Karabagh conflict, contrary to the intent of the subcommittee, as referring also to expanding existing funds for Azerbaijan's needs.

I would urge the subcommittee to build on the fine precedent it established last year by increasing the earmark for Nagorno Karabagh, specifying that the funds are targeted for use within Nagorno Karabagh and further broadening the scope of assistance to Karabagh to include the reconstruction of infrastructure damaged during the war.

□ 2030

I also believe we must maintain, without any exemptions, Section 907 of the Freedom Support Act, which became law in 1992. We must not allow any weakening or other ways of getting around the requirements of Section 907.

In addition, I believe we should require the administration to report to Congress on what steps it is taking to ensure Azerbaijan's compliance with the conditions of Section 907.

Finally, Mr. Speaker, in keeping with this goal of attaching tough but fair conditions to the provision of U.S. aid, we should retain the Humanitarian Aid Corridor Act. This act became law in 1996, and I believe, as most Americans, that countries that block the delivery of U.S. humanitarian assistance to other countries should not themselves receive assistance from the United States.

While the Corridor Act provision does not single out any countries, it would clearly affect the Republic of Turkey, which has imposed a blockade on Armenia since April of 1993. Given Turkey's failure to abide by the requirements of the Corridor Act, I urge the subcommittee consider tightening the provisions by removing or at least strictly limiting the current broad discretion of the Presidential waiver.

CONGRATULATIONS TO NEW MEXICO'S NEW CONGRESSWOMAN, HEATHER WILSON

The SPEAKER pro tempore (Mr. LAHOOD). Under a previous order of the House, the gentleman from Colorado (Mr. MCINNIS) is recognized for 5 minutes.

Mr. MCINNIS. Mr. Speaker, we have great news from the State of New Mexico. My district is in the State of Colorado and as many of us know, we lost our colleague Steve Schiff who represented very ably over the years the First Congressional District of the State of New Mexico.

After his passing, the Governor of the State called for a special election. And last night, the people of New Mexico made a very good, good decision. They are sending to Washington, DC a very capable, very competent, very energetic, very dedicated and very patriotic brand-new Congressman.

That Congressperson is Heather Wilson. Heather Wilson is the mother of three children, Joshua, Caitlin and Scott. Congresswoman Wilson is 37 years old. She will be sworn in tomorrow. She is married to an Albuquerque gentleman by the name of Jay Hone.

She is a distinguished graduate of the United States Air Force Academy. She is a Rhodes Scholar who earned her master's and doctoral degrees in Oxford University in England. Her dissertation, "International Law and the use of Force by National Liberation Movements," was published as a book and won the Paul Reuter Prize from the International Community of the Red Cross in Geneva, Switzerland.

For 7 years, Heather Wilson lived and worked in Europe. She was a negotiator and defense planning officer with the United States Air Force in England, where her work included negotiating all aspects of cruise missile deployment in Britain and managing to bring a \$125 million construction project to completion on time and under budget.

She then went to the United States Mission of NATO in Belgium where her work included arms control negotiations. She was the acting representative of the Secretary of Defense at the Conventional Forces in Europe, CFE, and handled negotiations in Vienna, Austria.

After leaving the Air Force in 1989, Heather became the Director for European Defense Policy and Arms Control on the National Security Council staff at White House.

In 1991, Wilson founded Keystone International, Inc., in Albuquerque to work with senior executives and large American defense and scientific corporations with business development and program planning work in the United States and Russia.

Keystone's clients included McGraw-Hill, Martin-Marrietta and others. Heather has written for the Wall Street Journal and publications specializing in foreign policy and defense issues, and has been a spokesman on those issues at Harvard University, the Military Academy at West Point, the Center for Strategic and International Studies, and other organizations.

She has also appeared on national television programs including Firing Line and CNN's Crier and Company.

She is active in civic affairs. Heather is a licensed foster parent, a member of the Albuquerque Kiwanis Club, and Kiwanians throughout New Mexico ought to be proud of what she did yesterday and who is going to represent their State.

She is a strong advocate for improved public schools. She was a bronze medalist in the 1990 American Rowing Championships.

What is exciting about Heather is not only her background, which is fairly extensive as I read by this resume, but the excitement that she reflects. One can tell by just talking with Heather how thrilled and honored she is to represent the fine State of New Mexico.

So New Mexico, despite the fact that there were some people who ran a very, very negative nasty campaign against her, her positive attitude, her "can do" attitude, her personality, clearly her background is what prevailed in that election.

Mr. Speaker, it shows that negative elections do not prevail. We can tell just by talking to her, just how excited and how positive this person is. That is what this Congress is made up of, a lot of people. That is what is should be totally made of.

Mr. Speaker, I am very pleased to see that tomorrow New Mexico will have a new United States Congressman sworn in. They have a lot to be proud of. I can tell my friends in New Mexico, as their neighbor from the north in Colorado and on behalf of all of my colleagues, we are thrilled to see their new Congressman in Washington, DC.

REAUTHORIZATION OF THE OLDER AMERICANS ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Oregon (Ms. HOOLEY) is recognized for 5 minutes.

Ms. HOOLEY of Oregon. Mr. Speaker, I rise today in support of the reauthorization of the Older Americans Act and increased funding for the Older Americans Act programs.

These programs, like Meals on Wheels, Senior Employment Service, Elder Abuse Prevention, they work. They help meet a critical need in a

cost-effective fashion. The OAA helps seniors help themselves and provides a host of necessary services.

Let us use Meals on Wheels for example. The last numbers we have are from 1995. They show that this program fed 2.4 million people 127 million meals, with about \$470 million. What that works out to is less than \$4 a meal. That is delivered to their home, and that is about half of that senior's daily food supply.

Mr. Speaker, 41 percent of Meals on Wheels programs have waiting lists, meaning a lot of seniors are not having their needs met with the current level of funding.

Without Meals on Wheels and the volunteers who help run it so cheaply and efficiently, millions of seniors would be forced to leave their own homes for nursing homes. That is not good for them and it is not good for us. Or worse, they would go hungry. But we do not need this as an example. We know this is a successful program.

I have worked with and talked to hundreds and hundreds of these volunteers who are out there volunteering every day helping other seniors. It is a program that works. It is a program that is so efficient, I cannot believe we have not increased the funding for this or reauthorized it.

We have thousands and thousands and thousands of volunteers across this country. Just in one senior center in one tiny part of my district, there are over 800 volunteers that work in programs that are authorized under the Older Americans Act. Multiply those in my district many times over, and then in the State, and across the Nation, and we have thousands.

But a successful program is one that is continually updated in order to work efficiently. We would not buy a car and never put gasoline in it. We would not buy a computer and not buy software for it. So why would we as a government allow a program like the Older Americans Act to go on and on without revising and improving its functions?

We knew in the last Congress there were some problems with the current act. We knew there were some programs that would work more effectively if streamlined and coordinated on the local level. We knew there was an increasing demand on this act to deal with the concerns of the expanding senior population. We knew it was in our best interest to continue to support the programs that successfully allow seniors to live independently, healthy and productive lives. We still know all of those things. Now it is time to act on that knowledge.

The longer we put off action on this matter, the more endangered those precious services become. An increase in the Older Americans Act funding is also essential in order to accommodate the additional individuals and responsibility that come under its care.

If we do not increase the funding now, we cripple OAA's ability to respond to our senior needs just as we

enter these baby boom years. OAA funding has not even dealt with inflation nor the number of seniors coming or its expanding duties. Without an increase in funding, we cannot expect to continue to provide the services that we value in our communities in the years ahead.

We must look toward reauthorization as a chance to make needed changes in the Older Americans Act. It is a chance to streamline programs and make what is already government's most cost-effective programs even more efficient.

We can also direct the resources toward current and new programs that they desire most. These adjustments are critical. We cannot afford to wait any longer. We have a responsibility to the seniors of this Nation and to the communities that benefit from the programs like Meals on Wheels, long-term care advocates, and elder abuse prevention that the OAA provides.

Mr. Speaker, it is time to reauthorize the Older Americans Act and turn our knowledge into action.

INCREASING MAXIMUM ALLOWABLE CONTRIBUTION TO EDUCATION SAVINGS ACCOUNTS

The SPEAKER pro tempore (Mr. MCINNIS). Under a previous order of the House, the gentleman from Pennsylvania (Mr. FOX) is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, I rise tonight to address my colleagues to encourage them to be involved in what I consider one the most important issues we face in the 105th Congress, and that is of higher education and education savings accounts, the expansion of that for our students, many of whom are graduates from high school and others who may be adults who, in fact, may need to move into a new field and, therefore, higher education will be in their future.

Mr. Speaker, last year in the historic Balanced Budget Act of 1997, the Congress wisely established education savings accounts to be used for higher education purposes. We all know that it is becoming increasingly necessary for the next generation of students to have a college education in order to make a liveable wage. With the cost of higher education continuing to spiral, the Congress needs to find effective ways of helping parents and students afford a college education.

Mr. Speaker, education savings accounts do just that. But under the Balanced Budget Act, the maximum contribution per year is only \$500. Even over many years, it is hardly enough to make a dent in the cost for a college degree.

Mr. Speaker, I will introduce legislation tomorrow that will increase the maximum contribution to \$5,000 per year. This will ensure that an adequate amount of funds will be available to defray the cost of higher education. We must give parents and students the access for college.

While local school districts, superintendents, principals, teachers, school boards, and parents are doing their best to help students be all they can be by encouraging achievements academically, athletically, and community service, the least we can do here in Congress is to make sure that education beyond college or technical school, junior college, community college, or university degree is possible. We can help that next generation unlock opportunities for a full education that leads to financial security, a rewarding career, and the opportunity give back to society.

So I hope that my colleagues in the House will join me tomorrow in sponsoring the increase to \$5,000 maximum contribution for the education savings accounts to help our students of tomorrow make sure they have the future they want for their children and their grandchildren.

GENERAL LEAVE

Mr. McGOVERN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the topic of my special order tonight.

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

There was no objection.

ON MEDICARE CUTS TO HOME HEALTH SERVICES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Massachusetts (Mr. MCGOVERN) is recognized for 60 minutes as the designee of the minority leader.

Mr. McGOVERN. Mr. Speaker, tonight I join my House colleagues to discuss the home health care cuts contained in last year's Balanced Budget Act. While I have pushed this issue in Congress, and with the Clinton administration since November, time is running out.

□ 2045

If Congress is going to find the will to fix this problem, all sides are going to need to act quickly and move this issue forward and move it forward now.

Mr. Speaker, a hastily conceived and ill-considered provision in last year's Balanced Budget Act mandated deep cuts in the Federal Government's commitment to home health care. My colleagues and I take to the floor tonight to shed some light on this national crisis.

When the Balanced Budget Act of 1997 was passed into law, it cut Medicare by \$115 billion over five years. Between \$16 and \$17 billion of the Medicare cuts came out of home health care through the institution of a per-beneficiary cap under an interim payment system. The new formula for home health care in the act will cap Medicare payments to home health care

agencies based on costs from four or five years ago, regardless of how efficient or wasteful an agency was at that time.

Now, try going to your local car dealer and telling them that you are only willing to pay 1993 prices for your new car. Rightly so, they would laugh you off the lot. But that is exactly what the Balanced Budget Act does to home health care providers throughout this country in order to save money.

Further, agencies are caught in a Catch-22 under this act. They are forced to cut agency costs back to 1993 levels, but Federal law prevents them from cutting back on the care they provide today.

In addition, eligibility requirements for people to receive home care services have not changed at all. Those who qualified for home health care before the Balanced Budget Act qualify for home health care today, and under law, they must be treated.

How do agencies cut back their costs some 20 percent without cutting back care? Well, in Massachusetts they have been closing their doors to everyone and getting out of the home health care business altogether. The rationale for the cuts in the Balanced Budget Act was that costs in home health care were spiraling out of control because of waste, fraud and abuse. And while we are all against waste, fraud and abuse, the Balanced Budget Act that passed this Congress made no distinction between wasteful providers and efficient ones.

The fact that my home State of Massachusetts has been nationally recognized as a leader in providing efficient home health care was apparently lost on the budget negotiators. The Balanced Budget Act cut wasteful agencies and efficient agencies at nearly identical rates. In Massachusetts and many other States where there is very little fat to trim, these cuts are going right to the bone. And even in traditionally inefficient States, the providers that did the right thing and kept costs down are being punished for that action. It is as if this Congress is saying to these agencies, these efficient agencies, shame on you for being efficient. Shame on you for being cost-effective. Shame on you for putting patients first. It is crazy.

Waste was rewarded in the Balanced Budget Act, and fraud and waste and abuse were not attacked. In fact, HCFA's own statistical data for 1994 shows that Massachusetts has the fourth lowest cost per home health care visit of any State. Further, Massachusetts passed a State initiative to encourage the use of home health care, avoiding the more costly alternative of moving seniors to a nursing home and, thus, saving tax dollars. But under the Balanced Budget Act, we are being punished for our forethought.

I strongly support balancing the budget. I recognize the need to crack down on waste, fraud and abuse. But the version of the Balanced Budget Act

that passed was an example of what happens when legislation is negotiated in back rooms and pushed through Congress without appropriate hearings, without committee oversight and without the opportunity for Members to examine closely the bill that they are about to vote on.

We are now beginning to see the effects of that provision, both in my home State of Massachusetts and across this Nation. Just a few months ago the Massachusetts legislature and the Governor of my home State worked together to investigate the impact of the Balanced Budget Act on the State.

In May the Commissioner of the Division of Health Care Finance and Policy in Massachusetts issued a report which stated that the Balanced Budget Act may result in, and I quote, "a large number of chronically ill patients being admitted to long-term care facilities at significantly greater cost to both the Medicare and Medicaid programs."

In essence, Congress passed an unfunded mandate on the States last year. By cutting home health care, seniors and the disabled will be placed in nursing homes. While the exact dollar cost to Massachusetts taxpayers is still unclear, I would like to commend my State's leaders for their efforts to shed more light on this issue and bring concrete information to the debate.

Attorneys General from across the Nation have also recognized the depth of the problem in home health care. Nineteen of them have endorsed H.R. 3205, a bill that I have introduced to fix the home health care crisis. At least three independent studies have assessed the impact of the interim payment system enacted in the Balanced Budget Act. The results are chilling. All the studies show that the interim payment system will most deeply harm patients with chronic, complex and incurable illnesses. The studies also show that the agencies that provide these services will be hurt.

According to the report by the Massachusetts Division of Health Care Finance and Policy, the Balanced Budget Act will result in a \$111 million cut to Massachusetts citizens needing home health care, and some have estimated that the Balanced Budget Act is threatening 1.5 million doctor-prescribed home health care visits in Massachusetts this year alone.

While only one in 10 Medicare beneficiaries use home health care services, those who do are poorer, sicker, more often female, more likely to live alone and have more mobility problems than the Medicare population generally.

Approximately 25 percent of these, quote, frail elderly in Massachusetts are over the age of 85. These are the people who are currently at risk for premature institutionalization since the enactment of the Balanced Budget Act.

There is also an economic component to this issue. Last year the home health care industry employed 18,000

people and was one of the major employers in Massachusetts. This year the numbers will be far less. To date, in Massachusetts the home health care community has laid off well over 600 staff and these reductions in staffing levels, particularly direct care staff, dramatically decrease patient access to quality care. Many of the people losing jobs are women who are trying to stay off of welfare or who were on welfare at one time. This is a particularly hard time to turn these workers out, given Federal changes under welfare reform.

According to a survey by the Home & Health Care Association of Massachusetts, 60 percent of their member agencies anticipate staff reductions over the next fiscal year. But numbers, of course, do not tell the whole story. And there is an enormous human cost to this crisis.

There is the story of Massachusetts Easter Seals. Massachusetts Easter Seals provides critical assistance to some of my State's most frail residents, and they do a tremendous job. But because of what Congress passed, they are being forced to eliminate their home health care program which served patients suffering from multiple sclerosis, Alzheimers, cancer, as well as those who are disabled or suffer from serious medical problems.

Mr. Speaker, over 500 patients will now be thrust into a shrinking home health care industry. Because of the Balanced Budget Act, very few agencies are looking for new patients, especially those with chronic and severe illnesses or disabilities. And 120 employees are being laid off as a result of Massachusetts's Easter Seals home health care agency closing its doors.

Now we have another victim in Massachusetts. The Assabet Valley Home Health Care Association in Marlborough, Massachusetts was trying to merge with a local hospital because they could not survive under the Balanced Budget Act as a freestanding agency. Two and a half months ago they asked the Health Care Finance Administration for a determination of what their reimbursement level will be under the new formulas in the act.

Until the gentleman from Massachusetts (Mr. MEEHAN) and I intervened last week, they had not received an answer and the prospect of a merger was terminated. One hundred thirty people have lost their jobs. Over 400 people will have to find a new provider of home health care services. The same scenario is occurring all over this Nation, and the efficient nonprofits are repeatedly the first to go.

Mr. Speaker, many of my House colleagues have recognized and are responding to how these costly errors in the Balanced Budget Act are affecting home health care. Over 100 Members of the House from both parties have co-sponsored legislation, sent letters to the administration or stood up for home health care in their communities. Several Members of the other body have also begun looking for a solution to this issue.

And this pressure is having an effect here in Congress. Many Members who were most opposed to changing the Balanced Budget Act and who believed that these cuts were necessary are now beginning to change.

In the House, we have seen motion on this issue. I want to commend my colleagues from both sides of the aisle who have pushed this issue forward.

At a Senate Finance Committee meeting in Washington on March, 12, Senators gathered to review the mistakes caused in the Balanced Budget Act as it relates to home health care. After months of pressure, I am pleased to tell you that at a meeting earlier this month, Christopher Jennings, Deputy Assistant to President Clinton for Health Policy, promised me that the White House will work with Congress to solve this crisis and will help move a bill through this Congress for passage.

I want to especially commend the grass roots efforts to solve this crisis for all they have done so far. Every day Members of Congress are hearing from senior citizens or patients in their district, from the medical community and from home health care providers. As an example, just today I received a letter from 22 national organizations that are members of the Consortium for Citizens with Disabilities, which I will enter in the CONGRESSIONAL RECORD.

They endorse my bill and they have asked Congress to change the home health care provisions of the Balanced Budget Act this year.

Clearly people across the Nation are becoming educated on this issue. Home health care is in critical condition. Time is running out. Our most vulnerable citizens are at risk. Congress must act now, if we are to keep people at home with their families.

I believe home health patients should be comfortable, at home, and should stay with their loved ones for as long as possible, not institutionalized in more expensive nursing homes. I believe that those are the family values that this Congress should stand for.

Mr. Speaker, Congress must act to resolve this crisis before we adjourn this year. People are being hurt now, and we cannot afford to wait. I call upon my colleagues and the leadership of this House, and I call upon Speaker GINGRICH to move quickly on this issue to allow us the opportunity to debate this issue on the floor, to bring this issue up so we can correct the mistakes that were made a year ago in this Congress.

Mr. Speaker, I yield to the gentlewoman from Michigan, (Ms. STABENOW), a leader in trying to correct the mistakes in the Balanced Budget Act, who has been very outspoken on behalf of home health care agencies in her district and across this country and somebody who has put patients first.

Ms. STABENOW. Mr. Speaker, I thank the gentleman from Massachusetts (Mr. MCGOVERN) for yielding to me.

I first want to thank him for very quickly moving, when this was brought to our attention, to put in his bill, H.R. 3205.

I was very pleased to be an original cosponsor with him to delay the interim payments system, as he has indicated there are other bills as well that change the formula.

The gentleman from New Jersey (Mr. PAPPAS) has a bill that also would right many of the wrongs, and there are certainly a number of options for us.

I rise also, coming from a State that is extremely efficient. We have, as a State, been serving people in their homes for a little over \$3800 per user, which is less than the national average of a little over \$4600, \$3800 versus \$4600. And we know that there are providers that are using as much as \$9000 per user, per patient.

One of the difficulties with the way that the Health Care Finance Administration has begun to implement the changes in the balanced budget agreement is by doing it across the board, as opposed to looking at the high-user States or the high-user providers and addressing them.

Instead they are penalizing everyone. In States like Michigan, where we have very dedicated small businesses, nonprofits, visiting nurses associations, Easter Seals, that have been working very diligently to keep costs down and yet provide very high quality care, they are being penalized. We are going to see a reduction of some 27 percent, and we are looking at possibly as high as 80,000 people in my home State over the next 2 years that will not be able to receive service.

This is a critical issue. As you have indicated, this is one that needs to be addressed now. It needs to be addressed tomorrow. As soon as possible. We have changes taking place July 1 that will greatly impact these home health care providers, and we need to make this a top priority.

I want to speak for a moment, if I might, about the kinds of responses and the kinds of conversations I have had with families in my district, not just now around home health care but over the last 2 years representing the people of the 8th district.

□ 2100

When I first was campaigning 2 years ago, I was amazed at the number of homes as you walk down the street that had ramps on the front of their homes. The number of people that were asking me about home health care for their mother, their father, their husband, their wife, another loved one, this is one of the top issues on the minds of the people that I represent.

We all know of loved ones who need care. It is not only better for them and for the family to support them at home, but we know it saves tax dollars. So it is really amazing to me that we would be looking at these kinds of drastic cuts in something that saves

money as well as providing quality care for families, for individuals. This just makes no sense at all.

I supported the balanced budget agreement. I want to have the budget balanced. I support going after fraud and abuse, but I can tell my colleagues, in Michigan, with my home care providers, they are not the folks that we ought to be focusing the attention on, because they are providing quality care at very low cost.

I did want to mention one other issue as well, and that is the whole issue of surety bonds. This is something that HCFA can address themselves right now if they choose to do that tomorrow morning. I would call on the administration of HCFA to do this.

We put in place a requirement to protect, for new home health agencies that were opening, requiring a surety bond of \$50,000 or 15 percent. The maker of that amendment indicated that she meant whichever was less.

Instead, we are seeing efforts that have gone into place that are requiring people to go for a higher amount, whichever is more, 50,000 or 15 percent, whichever is more rather than whichever is less.

What does that mean? Right now, only 41 percent of the home health care agencies across our country have been able to get a surety bond. The rule regarding having to have a surety bond takes effect July 1.

Time is running out. We have got to see some kind of a response that is reasonable to those that are on the frontlines providing home health care. We have got to make sure that it is done in a timely manner.

So I join with the gentleman from Massachusetts (Mr. MCGOVERN) calling on the Speaker of the House. There are vehicles. We have the gentleman's bill. We have other bills. We do not care if it is a Republican bill. We do not care if it is a Democratic bill. We just need action now because the people at home are going to be feeling the effects. We are going to see businesses closing, home health care not provided. And this is one of the most critical issues facing our families.

So I am pleased to join with my colleagues tonight, calling for action.

Mr. MCGOVERN. Mr. Speaker, I thank the gentlewoman for her comments, and she raises two points that I think deserve to be emphasized again; and that is that if we are truly trying to save money, and that is what one of the goals of the balanced budget act was about, this is not the way to do it.

You do not need to be a mathematician or an expert in health care to know that it is a lot cheaper to provide somebody good quality care at home than to have that person in a long-term nursing care facility or a nursing home.

The other thing that my colleague raises, which I think is very important, and that is this whole issue of how do you encourage efficiency and cost effectiveness. Massachusetts has some

great home health care agencies, visiting nurse associations who have been very good, who have been very efficient.

But the way this whole thing has been put together, in essence, we are punishing those who have been good. It is almost as if we are saying to these people you should have been bad. You should have padded the books. You should not have been cost efficient and effective; because if you violated all of the things that we asked you to do, you would be okay right now, because you would only be trimming the fat.

It is the good agencies that are being put out of business. I think that is sad, and it goes against and it contradicts what this Congress is supposed to be all about. It contradicts what this administration says its goal is in health care.

So I commend the gentlewoman for her comments. We are going to make sure we work together; that something happens. We are all dedicated in this here. We need to convince our leadership in this Congress that this issue is important enough to have a vote now.

I sent a letter to Speaker Gingrich, which I would like to enter into the record now, saying maybe we can bring this up during the technical corrections bill. We need to do this quickly. Clearly, this issue is of such importance that I think it takes precedence even over some of the things we have been doing in this Congress. So I thank the gentlewoman for her comments.

Mr. Chairman, I yield to the gentleman from Rhode Island (Mr. WEYGAND) who has been an effective leader in this issue. I was with him at Warwick, Rhode Island in a health care agency, and it was a great rally with over 200 people all protesting these cutbacks and demanding that Congress fix it.

I yield to my colleague the gentleman from Rhode Island (Mr. WEYGAND).

Mr. WEYGAND. Mr. Speaker, I want to thank the gentleman from Massachusetts (Mr. MCGOVERN) for yielding me this time.

Mr. Speaker, the discussion we are embarking on is very important for a lot of reasons. Home health care is, indeed, without a question, a kind of health care system right now in deep peril.

A lot of times, people will look at the home health care system and think about just the numbers and the dollars and the cents. Something that we fail to recognize often unless you had a family member or friend who has been receiving home health care is that home health care providers provide a lot more than just simply the medical services.

They come into our homes, they come into our families, and they provide a friendship and a warmth and the kind of camaraderie that goes along with the health care system and the provisions that they are giving to our seniors, to our disabled.

They reduce the cost of health care tremendously, as we have heard from

the gentlewoman from Michigan (Ms. STABENOW) and from the gentleman from Massachusetts (Mr. MCGOVERN).

The average cost throughout the country is only approximately \$4,600 per year. Many States like the gentleman's State and my State have tremendously cut those costs. My State, in 1996, had a cost of approximately \$4,000 per year per patient for home health care.

The wonderful thing about home health care is that it prevents many people from going into acute care facilities and long-term care facilities. But if we want to talk about dollars and cents, let us talk about them. Talk about what it costs for an average per patient cost per year; \$4,600. In Massachusetts, it is \$3,800 per year. In Rhode Island, it is \$4,000. In Michigan, I think it is around \$3,900 per year.

If that same person is forced into acute care facility or even a long-term care facility, the average cost on a national basis is around \$40,000 per year for a Medicaid recipient. That is shared about 50 percent by the State government and 50 percent on the Federal Government. That means, on the Federal side, we would be spending \$20,000 out of the Federal budget per year per patient.

It does not take much to determine that home health care is the far better bargain for the taxpayers and the Federal Government. We want to make sure that they stay in home health care versus a far more expensive acute care or nursing home facility. Granted, we have great facilities like that; and where they are needed, they are there for our patients. But it is far better to have someone at home.

At home, they get more assistance from home health care, but they also get assistance from family and friends. The unique thing about it is we are giving them a life of dignity and independence.

A lot of times, we talk about numbers and providers without seeing the faces of these people. The gentleman from Massachusetts (Mr. MCGOVERN), the gentlewoman from Michigan (Ms. STABENOW), and the gentleman from Maine (Mr. ALLEN) and I have all visited, as well as other people on the other side of the aisle, many different people in many different places to try and find out the real problem.

Let me tell you about a young lady that I visited with about a month and a half ago. Her name is Genevieve Weeser. Genevieve lives in Warwick, Rhode Island in the middle of the second congressional district in Rhode Island.

I went over and met with her. Genevieve is 98 years young. She is at home. She is in an apartment that she has, a Federally subsidized apartment unit, and she has friends who assist her. She is 98. She receives one nurse who comes in once a week to try to take care of her medications and monitor her various vital signs to be sure she is okay.

On top of that, she gets some small homemaker service. She has friends

who come in and help her. She has family who comes in and helps her. But without that kind of activity, without that kind of home care, she would be, without a doubt, in a far more expensive acute care setting or nursing home.

Her care has been cut nearly in half now because of the IPS system. She is going to be receiving half the number of visits and half the care. Eventually what will happen is she will end up in the nursing home some place, costing the taxpayers of Rhode Island and the Federal Government far more money than what we would have had with home health care.

Last year, when we made that revision in the budget and we put in a system that we thought would, indeed, try to give us a transition into a new prospective payment system from home health care, it did a lot of things that we were not familiar with, and that is why we need to change it.

First of all, home health care only represents 9 percent of the entire Medicare budget. Yet, it was targeted for over 14 percent of the cuts. It took a large hit. On top of that, it was the manner in which, as we have all heard tonight, that home health care agencies were targeted. It was one swoop across the top.

We had in Rhode Island one VNA already go out of business. It had been in business for 87 years, a nonprofit agency providing quality home health care at a cost of less than \$3,600 per year per patient. It had to close its door. Kent County VNA had to lay off 11 people. It cut most of its visits in half.

Do my colleagues know what? All of these good quality, very cost effective agencies have been driven to virtually close their doors, cut down on their employees. Yet, there is a unique part of the IPS system that many people do not know about, that if the gentleman or I started a new agency last year, and only had a 1-year track record and had costs of around \$5,000 or \$6,000 per year per patient, and we bought up those other agencies, those great cost effective agencies, acquire them somehow, we would now get, not the old rate that they are now required to keep, the 1993 rates or 1994 rates, but if I were a new agency buying up these older agencies, I would get a brand-new rate.

We are, in fact, saying to these new companies, gobble up the most cost effective companies and become fat and wasteful; but to the cost effective nonprofits and the ones that have been providing services for decades, we are closing the door on them. But more importantly, we are closing the door on patients.

Patients come first. It is not about jobs. It is not about agencies. It is about people. What we have done here is drastically wrong.

We have a bill, the McGovern-Weygand bill. We have other bills, the Pappas bill. There are a lot of bills out there that will help correct it. Just last month, in the Committee on the

Budget hearing on the resolution on the budget, I was able to put in amendment to the budget, one of only two amendments that were allowed as a sense of Congress that said the following.

First, the interim payment system for home health care services was adversely affected and has adversely affected home health care agencies and particularly Medicare beneficiaries.

Second, if home health care is threatened and further reduced, the overall health care costs of our people are going to rise. As we push down on home health, the cost of acute care facilities and long-term care facilities is going to go up. It is only a matter of time when the cost for HCFA and Medicare are going to rise if we allow this system to stay in place.

Third, we have asked all the committees of jurisdiction, particularly the Committee on Ways and Means, to come up with a revision on the interim payment system this year in this Congress before we go home so that we can make revisions that are appropriate to take care of the people at home.

Lastly, on the overall picture, we must have in place a prospective payment system no later than October 1 of 1999.

It is going to take the requirements of both parties and particularly the leadership on the Republican side to make this occur. In the Committee on Ways and Means, we need to have the chairman and the subcommittee chairman work with us on both sides of the aisle to come up with a revision.

It is not for us as Democrats or for them as Republicans. This is for people at home that need quality care at a cost effective way. We need to do it now.

I want to thank the gentleman from Massachusetts for having us this evening for this discussion. I particularly want to thank our friends on the other side of the aisle who have done a tremendous job to bring this to the forefront. We cannot let this go. We must provide the kind of dignity and independence that our people deserve.

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman for his comments and his leadership and for reminding this Congress that patients do come first and should come first.

The gentleman gave an example of somebody that he had visited. I had a similar situation. I went on a home health care visit with an agency in my district and visited a gentleman in Hopkinton, a retired fire chief in Hopkinton named Arthur Stewart.

This was in January, and it was a cold wintry day, and he was sitting by his fireplace. He said to me, "You know, a lot of things I want to do in life are right here, even if it is just poking this darn fire. I would be totally wiped out financially if I had to be in a nursing home or rehab. And I cannot say enough about what the visiting nurses are doing for me. And I just cannot see how shortsighted Congress can be."

It is people like Arthur Stewart, and there are hundreds, if not thousands, of Arthur Stewarts in Massachusetts and throughout the country who should compel this Congress to fix this mistake.

The gentlewoman from Michigan said it and the gentleman from Rhode Island said it that we need to act now. I mean, this needs to be done now. We cannot put this off until next year. If we do not do something now, the cuts are going to adversely impact these home health care agencies to the point where people are going to lose their care. They are going to be forced into nursing homes. Families are going to be devastated. I mean, this is just not right.

Mr. WEYGAND. Mr. Speaker, if the gentleman will yield just a minute, I know my friend, the gentleman from Maine, wants to speak on this subject as well. One of the things we have just seen come out of HCFA is that the rate of reimbursement that we have right now with this cut, HCFA and the people have acknowledged within Medicare that they are receiving far less, 93 percent actually is what they are receiving in terms of what they should be receiving. They are only receiving 93 cents on the dollar minimum. In many cases, they are cutting more.

□ 2115

The other matter is that the amount of surplus that we have seen generated from these massive cuts far exceeds what was estimated by CBO and everybody else. We are in fact cutting a system so drastically so that we can provide tax cuts to other people. That is the terrible shame that we have before us. We are taking people that are in dire need and we are cutting them to provide tax cuts to other people.

Mr. MCGOVERN. The other irony is that in this Chamber, not a day goes by when someone does not rise and talk about unfunded mandates on States. Ironically, this provision in the Balanced Budget Act is the biggest unfunded mandate on States that we have ever seen. This will be devastating to States if they have to pick up an increased cost of Medicaid to provide for long-term care. Every single governor has an interest in making sure this Congress acts on this issue and acts on it now.

Mr. Speaker, I yield to the gentleman from Maine (Mr. ALLEN) who has been a leader on campaign finance reform, who has been a leader on this issue as well.

Mr. ALLEN. I thank the gentleman for yielding. I just want to say to the gentleman from Massachusetts (Mr. MCGOVERN), the gentleman from Rhode Island (Mr. WEYGAND), the gentlewoman from Michigan (Ms. STABENOW) and the gentlewoman from Texas (Ms. JACKSON-LEE) that what you are all doing in terms of home health care is very important, not just for the people in your district, for people all around the country. The gentleman from Rhode Island

was right. This is at the end of the day not just about a few agencies and not just about the Federal Government. This is about some of our most vulnerable citizens.

I have been thinking about this issue a little bit and thinking of so many people that I run into in Maine. I have to say that of the people who come through my office, probably 25 percent of them are concerned in one way or another with health care. When I go out to seniors events or senior centers or talk to senior groups throughout the State of Maine, health care is always right at the top of their agenda. For most people that I talk to who are on that borderline, where the question is, can I continue to stay and live at home, or do I need to move into some sort of facility, almost all of them want to stay at home as long as they can. That seems to be an almost universal desire. The service that allows them to stay at home is some form of home health care. So I find, I believe, that not only is home health care critically important to how well we manage costs at the Federal budget level, but it is also critically important to all of those people, unlike us, for whom this is a real issue in terms of their health, their quality of life and their future.

Last year we took aggressive action to balance the Federal budget and through the Balanced Budget Act deal with the rapid growth and perceived fraud and abuse in Medicare's home health benefit.

I wanted to say a few words about some of the conversation that is going on. If we look back at the Balanced Budget Act, we were trying to get control of runaway costs in part of our health care system. It was not irrational to do that. We have to control fraud and abuse. We have to control the explosion of costs in our health care system. I want to go back and just look at what was going on. I think all of us have seen some figures about the growth of home health care in different States around the country. In every State, it has been significant. There has been significant growth. But the growth has varied dramatically from State to State. You can think about that growth in several ways.

First in terms of the number of home health care agencies. In just the last 4 years, in some States there has been a 20 percent increase or a 40 percent increase. But in some States, the increase has been several hundred percent in just 4 years, an explosion in the number of health care agencies. Second, you can look at the number of visits to an individual patient. In some States it is a fairly modest increase and in some States it is a very rapid increase. Third, you can look at the cost per visit. Again in some States it is fairly modest and in other States it is a dramatic increase in the cost of visits. So what the Congress did was to say, "Wait a minute, put the brakes on, let's try to deal with this, because if we can't get control of home health

care costs, we are in big trouble in terms of what is happening to the Federal budget."

So we took some action. But that action has included unintended consequences for people who are receiving home health care benefits and for the agencies that provide that service. We have to weed out fraud and abuse in this system. We have to find ways to cut costs in the Medicare system. But it is wrong to make cuts at the expense of our most vulnerable citizens, our homebound seniors who are relying for health care services provided in their home.

I want to talk about three of those services right now, or three of the changes we made. First, the removal of blood drawing as a Medicare covered service, what is called venipuncture. That is one. Second, there is a requirement of surety bonds. The gentlewoman from Michigan referred to that. That is an added cost for home health care agencies. Sometimes it may be appropriate, but other times it is simply an added expense which is not covered. And, third, the new interim payment system. Those three, I believe, are changes we have made where we have really gone too far and we need to fine-tune those changes. That is really what the McGovern bill does and why I am a cosponsor.

I want you to think about Maine for a moment, not just because it is the State I represent but because it highlights some of the issues that we have here. If you are in Portland, Maine, you are closer to New York City than you are to the northern communities in Maine. If you drive an hour north to Augusta, the capital city, you are still closer to New York City than you are to the northern Maine towns of Mattawamkeag and Fort Kent. It is a very big State. It is a rural State, like so many in this country, and you cannot have a hospital on every corner. So what you have is home health care agencies across the State which have sprung up to provide services to seniors, many of them in rural areas, and for many of whom a trip to the hospital is quite a hike. So I think it is unreasonable to require seniors to take a one-hour or two-hour trip to a hospital just to have blood drawn once a week when you can have a home health care nurse moving through a community providing this kind of service to many people who need it. And for many people, the drawing of blood, the testing of that blood is essential to monitoring their medications. Really it is a very important health care service. It is too expensive for them. It is too inconvenient for them. I believe we need to support the restoration of venipuncture as a Medicare covered home health benefit.

The second issue, the gentleman from Rhode Island referred to it in particular, the new Interim Payment System, IPS, bases Medicare reimbursement rates on agency and regional costs in 1993. Let us look at that for a moment.

We have, in Maine especially, nonprofit agencies which have been around for a long period of time which, of necessity, have had to hold their costs down. You look at the cost per visit or the number of visits of those agencies, and then compare them to some of the newer, for-profit agencies around the country, and there is a dramatic contrast. That dramatic contrast is one that represents a case where we should say to the nonprofit, well-established, low-cost agency, "You are doing a great job. Keep it up." But what have we said? No. We have said in 1998 through this IPS system, "You've got to go back to the cost you had in 1993 or 1994 and we're going to base what you get paid now on what your costs were then, not on what the costs are across the region, but on what your individual costs were back then." There is a problem there. Because if you have inflated costs, if you are a new agency, a for-profit agency or an agency which for whatever reason has inflated costs, you are going to get compensated for your current costs. If we are going to be cost-effective, what we need is a formula that will reward cost-efficient agencies, those agencies that provide quality care at an appropriate price. We need a formula that does that. That is why I support the McGovern bill, the Medicare Home Health Equity Act of 1998. It provides a fairer formula for reimbursement to efficient home health agencies.

I really believe that the bottom line is this. We have got to root out fraud and abuse in this system. We have got to contain costs, but we have to be smart about it. When it comes time, as it has, to look back at what we did last year and fine-tune that product and make it work better for home health care agencies and for seniors who are homebound, we need to do it. We have no business penalizing reputable providers and the seniors that their programs serve. That is why I am very glad to be here tonight with all my colleagues and to urge the Republican leadership in this House to bring this issue up, because time is a-wasting, our home health care agencies are hurting, our seniors need the assistance, there is no time to waste, we can do it now, we have got the time, and we should move ahead.

Ms. STABENOW. If the gentleman will yield, I just wanted to emphasize one point that the gentleman from Maine said so eloquently again, and that is the fact that we are talking about States and areas that have long-established, well-run home health providers who it does not make sense in my mind to be asking them to do a surety bond when they have a record of what they have been providing and what they have been receiving and billing for and so on, and it does not make sense when there has been an explosion in some areas, and certainly we need to be concerned about those explosions of areas as it relates to costs and number of visits and so on. Why do we not just

focus on those? Let us focus on the problem areas and not in turn require everyone to have to take a cut when we know that some are doing an outstanding job operating well below the national average. I think it is just a point that we need to reemphasize over and over again. We want to go after waste, fraud and abuse, of course we want to do that, but let us do it in a way that makes sense. I am sure that in Texas as well, we are talking about a situation where we need to be focusing on those, in fact, who are abusing the system and not focusing on those who have been providing quality service at low cost.

Mr. MCGOVERN. I could not agree with the gentlewoman more. In fact this, what we are talking about today, is not fraud, waste and abuse, because we all are in agreement that we need to crack down on these agencies that are engaged in fraud, waste and abuse. I do not think anybody in this Chamber is in favor of fraud, waste and abuse. Those agencies that abuse the system deserve to be held accountable. But as the gentlewoman points out in Michigan and the gentleman from Maine points out in Maine and in Massachusetts, we have some agencies that are models, that are cost effective, that put patients first, that are good. These agencies are being punished in essence for being good. That is not fair and that is not right, and a lot of people are going to suffer if we do not do something about it.

Mr. Speaker, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE) who has been a passionate spokesperson for so many issues impacting working families and senior citizens. I am delighted that she is here tonight.

Ms. JACKSON-LEE of Texas. I thank the gentleman from Massachusetts very much for yielding and for his leadership on this issue, recognizing the extreme importance of confronting the issue of health care in general and the home health care agencies.

Frankly I would like to speak on behalf of our neighbors, because that is what we are speaking about. We are speaking about the American people, but we are speaking about our neighbors that are in our neighborhoods, that own these home health care agencies in particular. It is extremely important that we recognize that we are doing damage to those people that we know, the small businesses, the people who take care of our neighbors. It is extremely important that your legislation comes quickly to the floor of the House.

We realize that Congress, as we all have stated, needed to take care of fraud, waste and abuse. When we began about the first Congress that I was here, the 104th Congress, we were talking about Medicare. Everyone was talking about fraud, waste and abuse. Those who wanted to completely overhaul Medicare wanted to do extremist type cutting to the Medicare system, when in fact the fraud, waste and abuse

was a mere, or a simple \$89 billion that we could have handled easily without totally remodeling the Medicare system. The same thing happens with the home health care agencies. We know that we have to take care of those issues. But does it mean that because there are rising costs, does it mean that the system is broken? Or does it mean that more people are availing themselves of home health services in an effort to stay in better health and remain with their families? That is the philosophical question that we should ask. If we are trying to make sure that we keep the good home health care agencies, so many of whom have come to my office, I have met with them, we visited at the Beale Senior Citizen Village when I gathered, home health care agencies from around the southern region where my district is located, people as far to the south as different areas and then well into Houston came to meet with me to talk about how they were being mistreated, if you will, and not being able to take care of their patients.

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And they asked a real question:

Is the rising cost a basis of abuse or fraud, or is it because we have been doing such a good job that in fact we have been having rising costs because so many people are using it?

I do believe there are certain issues that we need to emphasize, and that is, as you have said, I say to the gentleman from Massachusetts (Mr. MCGOVERN), there are effective, safe and caring home health care agencies, and my concern is what do we do when we lose those facilities in our neighborhood, what about the teacher who comes home during the lunch hour, who comes home at dinner time, who stays up all night to take care of her elderly parent? What is going to happen to that person who at some point in time has been able to access a home health care professional? What happens when that working single parent with that elderly parent in their home has no resources, no sort of assistance from a home health care agency because the resources, the Medicare process, has totally torpedoed, if you will, those particular neighbors and small business out of the system?

You are very right that the poor, sicker and certainly those with less, the less ability to be mobile, are the ones that use the home health care system, and again I would like to emphasize these are our friends.

One of the issues that has been discussed with me, of course, is in whole question of the interim payment system, and I would like to just briefly explain what the difficulty is, as my other colleagues have already mentioned.

Prior to the Balanced Budget Amendment, the home health care agencies were reimbursed after services were provided. Beginning in October 1, 1999, the agencies will be paid before serv-

ices are rendered and at a level significantly lower than that in place before the Balanced Budget Amendment.

The prospective payment system is a monumental change for the Medicare system. Setting aside temporarily the merits of the new payment system, a very logistical problem has developed. Congress enacted a 2-year interim payment system for home care that will be effective until the prospective payment system is implemented in October 1999.

Under the IPS, home health care agencies are reimbursed according to a new beneficiary limit. The problem is, as my colleague from Maine has already said, that home health care agencies have been provided with little or no guidance as to what this per beneficiary limit is. What the agencies do know is that the new limits do not accurately reflect the amount agencies spend to provide services.

In fact, as they have said to me, they are flying in the blind, and when you fly in the blind, you are apt to make mistakes. When you are apt to make mistakes, what happens? The regulatory agencies come down on you, our neighbors, the small business.

So, in fact we are in a catch 22. It is extremely important that we recognize that the new per beneficiary limits will reduce per-visit and per-patient costs, however patients' health may be compromised. We cannot establish unrealistic arbitrary cost-cutting measures without experiencing reduced quality and quantity in the home health system. At the same time again we are asking our friends, our neighbors, the small businesses, people who take care of our family members, we are asking them to make decisions and to make guesstimates and not do their work well.

Another point that I would like to mention that was a very strong point of discussion amongst my many agencies that visited with me on this issue, and that is why I am so grateful for this opportunity and your leadership, and that is the venipuncture, the removing of blood. Many people do not think of that as a serious element, if you will. Well, the recovering of blood gives all kinds of data to the physician, and the home bound person is in need of the ability for blood to be taken so that diagnosis can be made on whether their blood sugar level is up or down, what is going on with hypertension, what kind of infection they may be having, and necessarily that person is home bound and is in need of that service. The venipuncture service that was mentioned by my colleague is another one that was excluded from the availability of the home health agency.

And I received a call from a constituent whose mother is in her nineties, lives with him in Houston. She is home bound but happy that, thanks to her doctor's ability to monitor certain medication and blood levels through venipuncture she is able to remain at home with her son. She is not, if you will, incarcerated in the hospital. My

good friends who run hospitals, you know that I respect you a great deal. But how many of our senior citizens say I want to be at home, I am well enough, I want to be at home?

Well, Mr. Speaker, this home bound, elderly person, their son called me and said because of the changes made by the Balanced Budget Amendment her venipuncture coverage was drastically reduced and her ability to remain at home may be compromised. We should do all that we can to encourage our seniors to stay at home, and if their families are capable of taking care of them with assistance from home health care agencies, removing this coverage, it just skews the whole system, takes away the independence that these senior citizens are enjoying, the comfort of their home and the low cost.

Another constituent called and said I am desperate, I will even pay for the service in order for them to be able to utilize it at home, and of course we know that when you interfere with the Medicare system and offer to pay, that will not work because these home health care agencies are related very closely to the Medicare structure and system.

So my concern is that we do move H.R. 3205, but more importantly that we emphasize how much home health care saves us as compared to the \$40,000 a year we pay if you were home bound, not at home but in a nursing home.

I think the important as well is we care for our friends in the nursing homes, we respect them, but I cannot tell you how valuable the home health care professionals have been to our communities, how important it is to make sure that these agencies continue, and that they exist and that they continue to service in our neighborhoods.

I would hope that Speaker GINGRICH listens to the letter that you have sent and that we all join in pressing forward on both this legislation, the venipuncture legislation that we tried to reform the interim payment system that will be moving to the October 1, 1999, where we will be asking our home health care agencies to guess at what they will need and to take moneys ahead of time, which necessarily cuts down on the kind of treatment that the recipients need to get.

We need to thank those who brought health care costs down, and I do not think we are thanking them right now. We are putting a lot of burdens on them. In fact, they are frightened, they are fearful of closing their doors, they are fearful of having to lay off their employees, they are fearful of no longer being the kind of citizens that they have been by contributing to the community as businesses that are active at the partnerships and chambers. They are just plain fearful, and I, for one, want to see us do something about it.

And so I thank the gentleman from Massachusetts for his leadership on this, and hopefully we can push this

after the district work recess that we will be venturing onto. I would like to see this done before we leave here in August, and hopefully we will have that opportunity.

Mr. MCGOVERN. Mr. Speaker, I appreciate the comments of my colleague from Texas. As always, they are right on target, and again I hope that we can press this issue to a vote shortly after the July 4th recess.

This is and should be a bipartisan issue. One of my chief cosponsors on this bill is the gentleman from Utah (Mr. COOK) a Republican who has been very helpful in advocating passage of this bill. This should not be a partisan issue, and I hope we can move on it very quickly.

Let me summarize my remarks today and what everybody has so patiently and so importantly said here today by saying that I think that this issue comes down to three important points:

One, we need to find ways to provide incentives for high quality and good quality home care. The fact of the matter is that the way the Balanced Budget Act was constructed and the way the provisions with regard to home health care have been constructed the opposite is true. We actually provide incentives for home health care agencies and visiting nurse associations to be bad, to not be cost efficient, to not be effective, to not put patients first. Well, that is wrong. I mean that goes against everything that all of us believe.

So we need to fix the Balanced Budget Act so that we turn that around, so that we reward and recognize the good agencies and we do not reward the bad agencies.

Secondly, I think the issue here is that we need to prevent another unfunded mandate on States. I mean, as I said before, every Governor in this country should be up in arms over what is about to be thrust on them. If we do not do something, then more and more patients in States all across this country, who right now enjoy good quality home health care, are going to be thrust prematurely into long-term nursing care. Nothing wrong with nursing homes and nursing care in this country, but it is much better, it is much better for the patient, it is much more cost effective for the taxpayers if we can keep them at home, if we can keep them with their families.

If we do not do something, there is going to be a greater cost that Medicaid is going to have to bear, and that means that States are going to have to contribute more, and again I would encourage all those Governors out there and all the State legislators to weigh in with their respective Members of Congress so we can get this bill passed quickly.

Thirdly, I think that this issue is about family values. I mean every time I turn on C-Span or every time I am on the floor, someone is getting up and talking about family values, how we have to put families first and how important it is to provide families with

opportunities and security. Well, this is about family values, allowing a loved one to stay at home, you know, with their son or daughter. Allowing family units to stay together is important and is something we should try to preserve.

So, you know, this issue that we are talking about today is about saving money for taxpayers, it is about family values, it is about putting patients first, it is about what this Congress should stand for, and I hope that we can convince Speaker GINGRICH to make this one of his priorities. I hope that we can convince Speaker GINGRICH to put this on the schedule to direct the appropriate committees to act on this now. I mean I hope that we can convince Speaker GINGRICH and the Republican leadership in this Congress that this is not a partisan issue, that it is in their interests that we fix this mistake and we fix it now before anybody else in this country has to suffer.

And so I thank the gentlewoman from Texas for her comments, and I will yield to her.

Ms. JACKSON-LEE of Texas. Your passion has captured the real key. There is a massive constituency for this legislation, and it goes across party lines. It is to keep families together, it is to keep senior citizens and the disabled at home in a loving environment, and it is, of course, to applaud and respect the many small businesses like home health care agencies who go into neighborhoods knowing their neighbors, providing the service, providing the warmth, and the nurture, and good health care at a reasonable cost.

What more can we ask for? I think it is extremely important.

I appreciate the gentleman and his concepts of trying to get this to the floor very quickly.

Mr. MCGOVERN. Mr. Speaker, I thank again my colleague from Texas for her remarks, and I would just conclude by saying that I am going to do everything I can, and I hope all those watching will do everything they can to urge this Congress to move quickly on this legislation. We cannot afford to let this year go by, this session go by without acting. If we do, then people are going to suffer, more and more home health care agencies and visiting nurse associations are going to close.

That is not what we want, that is not what we should stand for, and we need to redouble our efforts in the coming months to make sure that this legislation gets to the floor for a vote.

And again I would urge the Speaker, if he is listening, to please listen to what we are saying here today, to do the right thing and to move this issue and move it quickly.

I thank my colleague from Texas.

Mr. DELAHUNT. Mr. Speaker, I am pleased to join with my friend, Mr. MCGOVERN, and our other colleagues in this special order on the home health care crisis.

The Balanced Budget Act has had a devastating effect on home health care programs

in many parts of the country. But the impact has been especially severe in Massachusetts and other New England states, which already provide more visits, at a lower cost per visit, than agencies in other states.

In Massachusetts, the new per beneficiary limit means a loss this year alone of \$100 million. That translates into 1.5 million fewer home visits for the elderly and disabled.

On April 30, the South Shore Visiting Nurses Association was forced to eliminate 50 positions as a direct result of the \$4 million in cuts it was forced to absorb. Home care providers across our state are facing cuts this year of 25 percent.

What does all this mean for the people who need these services? Listen to some of the letters I have received:

From a woman in Quincy:

I take care of my elderly mother. She has Alzheimer's Disease and has had several minor strokes. At the present time I am fortunate enough to have home health care for her three mornings a week through Quincy Visiting Nurses. Without this assistance, my mother would probably be in a nursing home. I cannot praise the nurses and aides that I have dealt with enough. My mother is unable to dress herself, take a shower by herself, or make her own breakfast. This is what her home health aide does three mornings a week. I do the same on the other four mornings. The release that I feel having three mornings of not having to do these deeds helps me keep my sanity. I am a full-time teacher in Quincy and I also work two other part-time jobs.

From a man in Harwich:

My wife is 78 and has Alzheimer's Disease. I am also 78 years of age and have spinal stenosis. I am her care giver and wish to continue to care for her at home and not in a nursing home. . . . Presently we have the assistance of two [home health] aides, two hours in the morning and one hour in the afternoon which is covered by Medicare. . . . With over 100,000 Massachusetts residents with Alzheimer's Disease or related neurological disorders and other related elderly problems, we are not alone, but it feels that way with no future long term home health care.

From a husband and wife in Whitman:

We read with dismay of the federal cuts affecting home health care. For those of us in our older years, being able to stay in our own home is the only bright light on the horizon. Anything else is unthinkable.

From a woman in Weymouth:

I take care of my mother and have for the past eight years. The last four years have been 24 hours a day, seven days a week. We have [a home health care aide who] comes in twice a day for a total of four hours. . . . My mother has Progressive Supranuclear Palsy which is a devastating neurological disease. It takes everything but your mind. She is literally a prisoner in her own body. The rest of the family has chosen to give up on my mother, thinking the way a lot of people do, that she should be put in a nursing home. Congressman Delahunt, would you want to be put in a nursing home if the only people that understood your needs were the aide and your daughter? . . . My mother still wants to be alive and if she was to go into a nursing home she would die. She communicates with us sometimes by blinking . . . or breathing a certain way. Sometimes it takes a long time to figure out what she wants. In a nursing home they wouldn't do that. I promised her I would never put her in one, and I vow to keep that promise no matter what. I'm not well myself and these cut-

backs might kill us both. . . . I appreciate you taking the time to read this letter and know you will do all you can to stop these cut-backs, for all those in need of home-care, for someday we may all need to depend on this system for love, care, and support because we have no one else to turn to or that cares.

And finally, Mr. Speaker, one of the letters I have received from nurses and physicians. This one comes from an emergency physician from Hingham:

As an emergency physician . . . I deal with the human side of health care financing decisions on a daily basis. . . . Most medical problems, recognized early enough, can be treated effectively in an outpatient setting. . . . At the present time . . . I am able to safely send elderly patients home with close nursing follow up rather than to admit to the hospital. I am afraid the proposed Medicare cuts will severely jeopardize this sensible medical option. There is also a human side to this issue. Frail, elderly patients do better in their own familiar home surroundings. I can attest by my own personal experience with my mother that her medical health and quality of life were markedly enhanced by having her medical care at home. Although she had multiple medical problems, she did not require a single hospital visit or admission in the last eight months of her life.

These are but a few of the letters I have received from my constituents about this situation. In addition, I ask unanimous consent, Mr. Speaker, to place in the RECORD a series of articles that appeared recently in the Mariner Community Newspapers based in Marshfield, Massachusetts, and a transcript of the calls from readers that were recorded on their response line.

Mr. Speaker, this testimony speaks far more eloquently than I can about the plight of those affected by this situation. But what is to be done about it?

I know that a number of bills have been introduced to try to fix this problem. I have co-sponsored H.R. 3205, which was introduced by the gentleman from Massachusetts (Mr. MCGOVERN) and the gentleman from Utah (Mr. COOK), which would delay implementation of the per beneficiary limit for one year. The extra time would enable home health agencies to minimize disruptions in services by gradually reducing costs.

Mr. Speaker, I voted against the Balanced Budget Act, largely because of the cuts it inflicted on the Medicare program. I continue to believe that those cuts were a terrible mistake. The least we can do now is help cushion the blow.

[From the Weymouth (MA) News, June 10, 1998]

LOSING PATIENTS OVER HOME HEALTH CARE CUTS

(By Alison Cohen)

Millie and Mattie B. started their life-long love affair when she asked her aunt to see if Mattie would take her to the high school prom.

"I didn't have a date and there were four boys living across the street," Millie said. (The couple did not want their identities revealed.)

She watched from her front windows while her aunt dutifully went across the street.

"I could see him come to the window—he'd been shaving—and then I saw him nod his head yes, so I knew I was set," Millie said.

Mattie smiles and gives his take on the request.

"I had the only car on the street, a '34 Lafayette," he said. "That's why she asked me.

That was more than 50 years ago and their dancing days are behind them now. Mattie, who turned 77 last week, spends his days in a wheelchair, the result of 12 years battling Parkinson's disease.

Someone once said growing old isn't for sissies. Mattie and Millie are living proof. As Parkinson's progressively immobilizes Mattie's once-powerful body, it takes all his strength to get through what used to be the simplest tasks. It's only one of many medical problems that leave him weak and vulnerable.

Millie, 75, wears a weight-lifter's truss around her waist. The weight she lifts is Mattie.

More than once she's been forced to pick him up off the floor after he's fallen. Once she suffered a slipped disc in the process and permanently weakened her back. Every night she transfers him from his wheelchair to the bed. Now her spine curves and the discs along her lower back project out like ragged mountain peaks.

"I got this taking care of him," she says, as she shows the nurse her ravaged back.

Worse yet, Mattie's voice dwindled to a mere whisper about six months ago. By the end of the day, he's exhausted from trying to communicate and she's exhausted from trying to hear what he's saying.

"It's frustrating," he says.

Parkinson's is a chronic, progressive disease. Millie doesn't want to think what the future holds if she becomes too frail to help her husband get in and out of his wheelchair.

"I hate to think about it," she says. "I don't think about it."

Another challenge lurks in Mattie's near future. After four years serving his country in time of war and 37 years toiling to maintain Boston's schools, Mattie has discovered the federal government wants to balance Medicare's budget by imposing a cap on the amount of money home health care providers can receive for taking care of him and other patients.

The cost-containment method chosen by the Health Care Financing Administration (HCFA), a division of the U.S. Department of Health and Human Services, caps reimbursement for each patient at a percentage of the agency's 1993-94 budget. Although South Shore agencies have yet to receive official notification of their maximum reimbursement level per patient, similar agencies in other parts of the country have been told they must serve even the most challenging patients for no more than \$1,500 to \$4,000. (See related story.)

According to Meg Doherty, executive director of Norwell Visiting Nurse Association, some of the patients on her roster cost as much as \$50,000 a year to maintain at home. And the fallout is already happening. On May 7, Easter Seals of Massachusetts announced it could not afford to provide home health care services with such unreasonable cuts.

Life, for Mattie, already has dwindled to the size of the small summer cottage on the South Shore they winterized and moved to four years ago when it became impossible for him to maneuver the stairs in their South Boston home. Getting outside is a production—Mattie must move from his wheelchair to a walker to traverse the step separating the dining room from the back entry and a shallow flight of stairs leading outdoors.

Getting to bed is an even greater challenge. Together they position his wheelchair near his bed. Millie struggles to push him up out of the chair as best she can.

"I fall right in," he says. "She straightens my legs out and covers me with the blankets."

Most of his days are spent watching television and talking with Millie. On weekends, he looks forward to spending time with the two of their six children who live nearby.

The man who once prided himself on his ability to "fix anything," now relies on a cadre of home health aides who come five days a week to assist him with the activities he once took for granted, things like showering, shaving and getting dressed. On the weekends, he must ask his son to handle that duty. A visiting nurse comes once a week to check his blood pressure and monitor his health.

It's hard to put a price tag on continuity of care. Sometimes symptoms are subtle. An older patient doesn't experience the crushing chest pain that alerts middle-aged men they are having a heart attack.

"I start to lose my breath," explains Adolph Wacker, 84, a home health care patient.

A visiting nurse checks Wacker once a week, looking for clues that would show whether trouble is looming.

Wacker had five heart attacks, including a cardiac arrest, within a 15-month span. He also has a pace maker to regulate his heart rhythm. The hands that once deftly wielded butcher's knives tremble uncontrollably from Parkinson's disease. Wacker also suffers from diabetes. He's tethered to an oxygen pump because of chronic obstructive lung disease that leaves him vulnerable to pneumonia.

His rapid decline made it necessary for Wacker and his now-deceased wife, Stephanie, to leave his Connecticut home and move in with their daughter, Barbara Steiglitz.

"It was obvious he couldn't go home and care for my mother any more," Steiglitz says.

Steiglitz couldn't do it alone, either. A registered nurse, Steiglitz works three days a week for a long-term care facility in Dorchester. Although her mother, who suffered from advanced Parkinson's disease, could be left alone for short periods of time at first, it didn't last long.

"She wandered," she said. "She would get to the end of the driveway and wouldn't know how to get back to the house—and there's a swamp across the street and conservation land goes almost to Norwell."

At the end, both Stephanie's mind and body failed badly.

"She needed total care," Steiglitz said. "She was in diapers, she was senile and she could barely walk."

Steiglitz put together a patchwork of family care, home health services and what Wacker himself calls "my private babysitter" to keep the two of them safe and healthy.

Stephanie Wacker died Sept. 27, just a week shy of their 59th wedding anniversary.

Wacker says they met when a fire alarm went off.

"She asked me what happened," he recollected. "We got to talking, I walked her home. We started dating and a year later we got married."

The two were very close, he says. It remains a marvel to him, perhaps because his father died when he was two, his mother when he was seven.

"My brothers and sisters took care of me until I was 16. Then I was on my own," he explains. "We got married when I was 24."

Wacker is a favorite with his caregivers.

Home Health Aide Anne Marie Foley comes two mornings a week. She helps Wacker get up and dressed, brings him downstairs and makes his breakfast. The two of them swap recipe tips.

"He's an incredible cook," Foley says. "His soups are wonderful. I'm trying to get him to write a cook book."

A male home health aide, Frank Serra, comes once a week to help Wacker shower. Although Wacker would like to have a shower more frequently, especially in the hot, humid season, Medicare won't cover the costs because he isn't incontinent.

The combination of lung disease and Parkinson's makes him increasingly frail.

"I try to walk up to the end of the driveway and back for exercise," he says. "I have to stop twice on the way up. And I can't talk and walk at the same time or I run out of breath."

Falling is an ever-present risk because Parkinson's disease affects both balance and gait.

"He fell in February and cracked his sternum," says his daughter. "I really have to hire someone to be here when I'm not home."

Wacker is philosophical about his own failing health.

"As long as you know your own capabilities, you get along pretty good. You have to accept the idea you can't do what you used to do. If you don't you go nuts and you end up in the hospital any way."

As Wacker's health inevitably deteriorates, his daughter promises to advocate for the services he needs, and as long as there is a Medicare certified home health care agency providing services in * * *, he'll continue to get what he needs.

That's the kicker.

Home health agencies aren't run on volunteer power. Without a realistic reimbursement schedule to pay the nurses, therapists and home health aides for services delivered those agencies say they cannot continue in business.

The U.S. Congressional delegation from Massachusetts hopes to derail the new system before it drives any more home health care agencies out of the business. Rep. James P. McGovern, D-Worcester, and Sen. Edward M. Kennedy have filed companion bills in the House and Senate to address the problem.

The bills will delay the effective date of the caps until Oct. 1, 1998, to allow time for agencies to adjust to the system. Additionally, the bills change the base year for calculating benefit limits from 1994 to 1995.

"This change means that payments will more accurately reflect the type of home care that is currently delivered," explains Kennedy.

In testifying about his bill, McGovern has said that the one in 10 Medicare beneficiaries who use home health care services are "poorer, sicker, more often female, more likely to live alone, and have more mobility problems than the Medicare population generally. Approximately 25 percent of these "frail elderly" in Massachusetts are over age 83."

[From the Scituate (MA) Mariner, June 18, 1998]

PAYING THE PRICE FOR MISMANAGEMENT (By Alison Cohen)

According to many home health care providers and advocates, Medicare officials created a classic example of the law of unintended consequences when they embarked on their campaign to root out fraud, waste and overutilization in the home health care system.

The federal government decided large increases in home health care were caused by waste and fraud following a two-year investigation, known as Operation Restore Trust. That study focused on the five states that account for 40 percent of Medicare payments; California, New York, Florida, Texas and Illinois.

The subsequent report by the Office of the Inspector General of the U.S. Department of Health and Human Services said that one-

fourth of home health agencies in those states received nearly half the Medicare payments for home health care. The report placed the blame on for-profit, closely held corporations where owners engaged in a web of interlocking companies that referred patients among themselves. Texas was cited as the biggest offender.

A similar study conducted in Massachusetts and Connecticut in 1997 uncovered no such pattern of fraud.

According to Julie Deschenes, legislative and public affairs coordinator for the Home & Health Care Association of Massachusetts, "No fraud was uncovered in the 20 Massachusetts agencies that were audited."

Deschenes said the worst that federal auditors could find were examples of technical billing errors, mostly stemming from failure of an attending physician to update medical records to reflect the need for the higher level of services patients were receiving and for which Medicare had been billed.

Rather than conducting audits to identify and penalize agencies guilty of intentional fraud or overutilization, Congress believed the solution to spiraling costs nationwide and wildly disparate costs among the states should be a standardized, flat rate according to diagnosis. This system, known as the "prospective payment system," is similar to the system Medicare uses in paying for hospital care.

When the federal Health Care Financing Administration (HCFA) said it couldn't develop the complex formula necessary to reward efficiency by providers as quickly as Congress wanted, the interim payment system based on per patient caps was set in motion. This payment plan—set to run through Oct. 1, 1999—basically freezes spending at 1993-94 levels, before Operation Restore Trust began.

The projected caps fall hardest on frugal, non-profit agencies and rewards those that spent lavishly at taxpayers' expense. Home health care agencies in Massachusetts consistently deliver care cheaper than the national average both in terms of Medicare's cost per visit and per patient. Relying on data provided by HCFA itself, The Wall Street Journal reported earlier this year that Massachusetts' home health care providers served 119,000 patients in 1995 at an average cost of \$50 per visit, which was 19 percent below the national average of \$62. The average annual cost per patient worked out to \$4,730, or less than six percent above the national average of \$4,473.

Across New England, the regional cost per visit undercut the national average by 15 percent and the annual average cost per patient was only \$4,400.

Donna (who didn't want her last name used) has been a home health care worker for more than 20 years and says she can't understand with those kind of figures why Massachusetts people have to suffer. She says she's outraged by what's happening.

"We're the ones on the front lines and we're the ones who have to deal with the patients," she said. "Do you know what it's like when you have to tell them this is your last day with them. Some of these people have been my clients for a long time."

Donna spoke of a 50-year-old patient she has been assisting. The man, a father of two young children, is primarily bed-ridden, he has to be fed and has come to rely on home health care workers to maintain some semblance of a normal life.

"I was overcome on my last day with him," she said. "I felt awful. It was so hard to tell him it would be my last day helping him. You feel so much guilt. What am I supposed to say, 'gee, good luck?' How could this be happening?"

If there is fraud and over-spending, Donna says she is all for fixing it. But if Massachu-

setts and several other states have been spending reasonably, she can't see why others can't pay the price.

HCFA identified the big spenders among the states as Louisiana, Oklahoma, Texas, Tennessee, Utah and Mississippi. On average, home health care providers in these states spent \$5,488 per patient in 1995, or almost 23 percent more than the national average. The biggest offender was Louisiana with an average cost per patient of \$7,867, almost 76 percent more than the national average.

Officials at the Texas Association of Home Care have justified their higher costs, saying they have a high rate of poor elderly who have never had proper health care.

Costs are driven up by the increasing number of Americans considered "frail" or the "old old"—those aged 85 or older. Additionally, medical technology has improved survival rates for individuals who survive head and spinal chord injuries and degenerative diseases such as Alzheimer's, Multiple Sclerosis, heart failure and severe diabetes.

The resulting "per beneficiary limit" guarantees, in HCFA's own words, that 90 percent of all home health agencies will be reimbursed at a rate below the cost of delivering services. Providers say it will put them on the road to financial ruin. How quickly they arrive at that destination depends on the number of high-cost patients an agency serves. These are the patients with degenerative, progressive diseases such as Multiple Sclerosis, Muscular Dystrophy, Parkinson's Disease, Alzheimer's Disease, advanced diabetes and other conditions that require intensive levels of care.

Apparently loathe to slash services to America's most vulnerable citizens, the frail elderly and persons with disabilities, Congress and HCFA announced to recipients of home health services and their advocates that no patient was to be denied services, terminated from care or have the level of care reduced unless medically justified. That puts home health care providers in a Catch-22 bind: they cannot reduce costs through reductions in services or cutbacks in direct care staff. Already several home health providers have chosen to abandon ship rather than risk bankruptcy.

Cynics might find this governmental "solution" to spiraling costs reminiscent of the village pacification campaign of the Vietnam War years. That official "solution" led to an American officer explaining, "It became necessary to destroy the town in order to save it."

According to Deschenes, home health care is being asked "to assume an unfair proportion of Medicare cuts." While home health care consumes only 9 percent of total Medicare expenditures, it is targeted to assume 14 percent of the total five-year cut and close to 18 percent of the provider cost enacted in the Balanced Budget Act of 1997. A recent HCFA forecast has increased the home health "savings" to \$20 million, or 25 percent more than the original estimate by the Congressional Budget Office at the same time that the population of older Americans continues to grow.

Home health care providers and people who receive the care aren't buying this theory that no one will lose benefits. It just doesn't add up, they say.

Community Newspaper Company's Reader Response line was flooded with calls last week regarding the potential cuts in home care. More than half the calls came for people who were losing some form of care, or family members of those who were expected to lose their care.

A Marshfield resident told the story of her grandmother who has already been denied additional care. Her grandmother has been cut back to one visit per day from a home

health aide and now the family is forced to provide care that was once handled by professionals. It is now up to grandchildren to come at night and put their grandmother to bed, change her and put her in diapers.

"It is devastating to her," the woman said in her call. "She cries every night when she sees us coming. She's so humiliated her grandchildren have to do this. It's a disgrace to see what these poor old people have to go through. These people have worked all their lives and this is what it has come down to. It's just ridiculous."

Experts say saving money in home health care may even be counter-productive. If home health services dry up, patients will be forced into more expensive nursing home placements or extended hospital stays. The pocket may change, but taxpayers will still be paying the bill.

While home health care isn't cheap, it certainly provides a cost-savings when compared to a year's stay in a nursing home which Deschenes estimates at \$60,000 per year. More importantly, it allows older American and disabled citizens to remain linked to their families and their communities.

The importance of that connection to home, family and community can't be quantified, but it is of immeasurable value to all of us in determining our quality of life. That message came through loud and clear in the messages on the Reader Response line during the past week.

A number of callers said they feared they might be forced to put their mother, father or elderly relative in a nursing home. And they held out little hope for their "golden years," as one caller put it.

How can this be?" questioned a Weymouth resident. "I won't be able to care for my husband if we can't maintain the current level of care, that would be devastating to us, both financially and emotionally. We have been together for 55 years. I can't bear the thought of being separated like that. We are getting along fine at home right now, but that could all change. Please don't let it."

Edward J. Flynn, executive director of South Shore Elder Services, Inc., says if the current policy remains unchanged, its primary victims will be the nation's elders. In a recent newsletter, Flynn urged Congress and HCFA to reconsider the cuts and clarify eligibility criteria.

CALLS FROM CNC READER RESPONSE LINE

1. John Murphy, Weymouth. Why isn't Sen. Kerry speaking out loudly on what government is doing to cut reimbursement to health care providers? Where is the senator on this issue? He should be at the forefront of the battle to protect Medicare.

2. Louise Cipriano, Weymouth. I was informed by my healthcare, I have a home health aide now and my insurance pays for it, in September, I will be 65 and I'll be on Medicare and Medex and they said they wouldn't cover me because I'm a chronic patient. I'm unable to walk or stand, I have severe rheumatoid arthritis and osteoporosis. I can't even wash my face. I need a complete sponge bath. I can't get in the shower and my husband also is disabled with his hip. He had a serious operation and hip replacement. He would have to take care of me and they would not send anyone to give me personal care with this new Medicare thing. I am a chronic case they said and unless I need a nurse they cannot send me Medicare help. Please don't let this happen to us. It would be devastating. I don't think we could take it.

3. Nancy W. Clapp, Marshfield. I am adamantly opposed to the Medicare cuts and I would like to see the congressmen if nec-

essary establish a fraud squad to sort out Medicare's problems which would quickly pay for itself and look for some other way to balance the budget and not on the backs of those who need help most.

4. Karen Ruginski, So. Weymouth. I work for ZNA Associates in the office and I see (health care) cuts on these patients and I also have a father-in-law who is very ill with lung cancer and can barely do anything on his own. I have a handicapped child and I need to go out and help my father in law, because he's so ill and no one else can who's home. So it's very difficult for us and if the home health care agencies could provide more care and get more benefits from Medicare and the other insurance carriers, this burden wouldn't be so difficult. I'm hoping they'll make changes to this. Home health care is definitely needed. They're discharged early from the hospital and they need care at home.

5. June Sutcliff, Weymouth. I'd like to add my voice saying Congress needs to find other ways to reduce expenses. Home care should be the last place they cut. Some of the pork barrel projects we read about should be eliminated first.

6. Thomas F. and Elaine Cahill, Pembroke. We totally object to cuts in home health care. Our own family has suffered on account of that and we are totally against it.

7. Lynn White, Hanover. My brief comment is that even if people get worse and deteriorate under this plan, the Medicare has made it that it will make no difference. The amount of money spent will be the same. So what this says is that the federal government doesn't care whether people deteriorate or not, because they've set their budget and locked in their cuts. Visiting nurses all these years have kept people stable, and now without them people will be unstable but it will make no difference as far as cost to the government.

8. Ann Martin, Braintree. I'm calling to protest Congress's attempt to cut Medicare's health care program. Please tell them not to do this. Because most of us can't afford outrageous home health care. 843-7325.

9. Joan Golden, Hanover. I'm calling with regard to the Healthcare cuts. My grandmother is 92 years old living in a nursing home and because of healthcare cuts she may be in jeopardy of being taken out of the nursing home, and they're saying she can be put into the community or in a lesser scaled facility. It's just disgraceful because she spent her whole life putting money into this system and now everything she had is gone and we're depending on the system. I'm scared. I'm her granddaughter, I don't know what I'm going to do if she doesn't have that facility to depend on. It's a very scary thing, and like you said it's the people who need it the most. Thanks and I hope we can do something for the number of people who I'm sure are in the same predicament.

10. Mary S. McElroy, N. Weymouth. I would like to say to my congressmen—Have the courage to stop sending billions of dollars to the Middle East for Israel and Egypt. Spend the money on our senior citizens who have paid taxes in this country and deserve decent health care. We get nothing back from Egypt or Israel, take care of our own before we keep throwing our money away. Have some courage.

11. Lorraine McGrath, East Weymouth. I am a former supervisor of home health care services. My comment is briefly that the entire purpose of home care is to keep patients out of hospitals and nursing homes and at home as long as possible and to cut down on trips to emergency rooms etc. I wonder if the government has done any study on the cost of these patients being hospitalized and re-hospitalized numerous times or placed in

nursing homes. The cost of hospitalization and nursing home placement is far more than home care has ever been. I think they're putting the cart before the horse because while they think they're going to save money here, they're really going to pay more in the long run with more frequent hospitalizations and long term care placement.

12. Joan Kyler, Marshfield. I want to comment I have two elderly parents who are in a nursing home and it seems ridiculous to me that because of Medicare and Medicare cuts, and because they didn't have enough money to afford to stay in their home, the state is willing to pay \$5,000 to \$6,000 a month per person as opposed to keeping them in their own home, with home health care. I don't care how good a nursing home is, it's not a place I really want my parents to be. It's our future as well, and in another quarter century you and I may be in a nursing home. That's something I shudder to think of.

13. Sandra Sweetzer, Duxbury. In regard to cutting home health care aid to the elderly, I take care of my mother, she's a diabetic. She's had a heart attack. She's almost wheelchair bound now. She's on a walker, I have to learn now to give insulin shots and mix insulins. I'm not a nurse. I don't know how to take a blood pressure. I do the best I can and pretty soon the home health aid nurse who comes once a week said she won't be coming anymore and I think this is a crime. It'll force people into nursing homes who should still be at home. It's terrible.

14. Mary O'Neil, Scituate. I just read your article in the Scituate Mariner about the cutbacks and I think it's disgusting. I know of some people who have been hurt by it. I just wanted to let you know.

15. Ann Tarallo. My husband Joseph and I are really appalled at any cuts that are being made to home care and Medicare. I firmly believe there are other things that can be cut, so that these don't have to be.

16. Annabelle Burlinback. I'm replying to the response line against the ill-advised cuts in home health care.

17. Tina Degust, Marshfield. I read your article in the paper and I just wanted to let you know it's affecting two people I know. My grandmother who has the home health care and also my father-in-law. It's absolutely terrible what's happening, to see just the horrible things that are going on. My grandfather now only receives one aide during the day and in turn all the kids and grand-kids have to come at night to put my grandmother to bed. She actually cries every night to see us coming in because she has no legs and we have to change her. She's in diapers, and she's so humiliated by this. Not to mention my father-in-law who now has two home health aides coming in also, who's cut back to absolutely nothing, will have nothing during the week and his wife (my mother-in-law) has only one kidney. Right now she needs a serious operation on the one kidney that she has because it's not functioning right, and they expect her to put him to bed. He's had a stroke and he's paralyzed on one side. It's absolutely devastating to see what these poor old people have to go through. It's affecting two sides of my family. Something really has to be done, these people shouldn't have to go through this, they've worked all their lives. My grandfather's a veteran. It's just ridiculous.

I guess what I'm trying to say is that these people shouldn't have to go to nursing homes, they should be able to live in their houses until whenever the time comes for them to go and they should be able to live in comfort and not have to worry about who's coming to change them and take care of them. They should be able to have the help they need and not have to worry about it

every day who's going to be able to put them into bed and who's going to have to change them and the embarrassment. They should be able to leave the world with a little bit of dignity. They just worked too hard for their houses and everything they have. I think it's just absolutely devastating. I can't imagine how this is going to affect my family alone. I have my father-in-law and my grandmother. And my grandfather who has a colostomy and is 78 years old, he has to help lift my grandmother to put her into bed. It's just a matter of time before it takes its toll on him and then what's going to happen to my grandmother. It's just really sad and not fair.

19. Rev. STEVE HARVESTER, Church Hill United Methodist Church, Norwell. I'm calling to say the elderly and frail members of my congregation would, in most cases, rather die than be put in a nursing home. Home health care is their spiritual survival line and I hope and I pray that our congressmen will do everything in their power to keep home health care alive and well.

20. Louise Penny, Rockland. I think it's very necessary that they do not cut home health care.

21. Beverly Thomas, Marshfield. My husband is receiving a home health aide two times a day, seven days a week. It's about the only way we can manage and I certainly would encourage the legislators to do what they can to help people who need to receive this kind of assistance.

22. Jacqueline Harrington, Scituate. I am begging our congressmen to do something about these Medicare cuts to our most fragile people who need the care the most. I'm in the field so I know what I'm talking about. They can't be left out on the limb, there's got to be some other way to do it. Please find a way.

23. Mary Anne Spilache, Abington. I work for Home Health and Childcare in Brockton as a home health aide and I don't think it's right that they're making all these cuts on these poor elderly. They need so much of our help. That's all I've got to say.

24. Jo Duvall, Hingham. I'm calling in response to the article in the Hingham Journal yesterday and I wanted to definitely join you in speaking out against the ill-advised cuts in home health care. As a health care worker I'm finding this devastating to my patients and I certainly hope that something can be done about this as soon as possible because it's going to be very detrimental to our whole society.

25. Pat Peters, Abington. I'd like to express my opinion on the way the government is treating the elderly by cutting back on their services. I'm a home health aide and I don't understand if you leave elderly people who are sick and need services by themselves, and you don't provide them, ultimately they're going to fall or end up in nursing home and that's going to cost the government more. I think this is a real tragedy.

26. Joseph McCue, Hingham. How are senators acting on this question? Is it a feat a complete or do we send the information to the lady that has one the cutting?

27. Eunice and George Pope. We are now receiving home health care services that will be cut off shortly due to the Medicare cut-back. I would like to speak to someone and complain further if someone would return my call. (781) 383-1928.

28. Gus Duffy, Scituate. I want to lend my support to people trying to get home health care and keep it from being cut, and express the opinion that without a Democratic congress, you're not going to have any luck, because they're going to balance the budget on the backs of the poor and serve the wealthy. Get the Republicans out and you'll be in good shape.

29. Dolores Murphy, Rockland. I read your article and I guess I could sum it up with "There but for the grace of God go I." And hopefully make an impact.

30. Bill Parr, Weymouth. I think cuts for home health care are despicable since there's so much government waste. They should look at their own inefficiencies to be cut versus home health care that's serving a wonderful service.

31. Elizabeth Greenwald-Centani, Hingham. The reason why I am especially interested in this article is that I am a home health worker, a nurse, and I also have an elderly mother who suffers from Alzheimer's. I've been impacted in both ways. And I was very pleased that your article brought up both situations, both scapegoating of home health agencies and the plight of the elderly.

32. Ralph and Polly Gosnick, Marshfield. We want to be recorded in favor of efforts you are putting forward, and want our congressmen to know that we are opposed to the cuts.

33. Mary Alice Flynn, Scituate. I think that the plan they have on cutting the budget back on the helpless people who are citizens and who have served our country so well over the years is reprehensible, and I feel it's imperative that it be turned around. I thank you for your efforts on this behalf.

34. Sophia Jackson, Weymouth. I think they should stop spending so much money on investigating sex scandals that make no difference to us and put the money where it belongs, for the elderly.

35. Christine Whitehouse, Marshfield. I have been affected by the Medicare cuts and I would be interested in what you hope to offer. I would like to write a letter as well, so any information you could be of assistance for I'd appreciate.

36. Suzanne Naustilius, Marshfield. I wanted to call after reading the article in the newspaper to say that I am very much opposed to cutting federal spending in the area of Medicare home health, and I would like you to add my name to any kind of letter or whatever kind of program you're going to undertake, to try to give this message to our congressmen and senators.

37. Dolores L. Johnson, Hanover. I've been a volunteer for the South Shore Visiting Nurses Association for several years. They've been forced to move to Braintree from Hanover. The whole thing disgusts me. I am writing today to my senators and representatives.

38. Dorothy R. Field, Kingston. Our seniors should come first. I work in a nursing home and some of our clients are devastated, having to leave their homes when all they need is a home health care worker to come by and see to their needs.

39. Alice and David Katema, Holbrook. We're very concerned about the possibility of cutting the budget by cutting Medicare home health programs. We feel that if you don't need them today you may need them tomorrow. Everybody's getting older and we're all so concerned that they may not be there when we need them. We also want to have the legislature think about the fact that if they don't spend at that level, they may need to spend more at another level which is hospital care.

40. Mary McDonald, Hingham. Thank you for the opportunity of leaving a message for the congressmen. I'm an RN who provides infusion therapy in the home. In have come across and my company has had to deny providing antibiotic therapy, just basic therapy, for these patients in their home because Medicare doesn't cover that cost. I just don't understand where the cost cutting comes in. We are hurting our most fragile population in that to send a nurse out to them to teach them how to do procedures themselves, a lot

of times we can get them independent. To me that's a bigger cost-cutting measure than keeping them in the hospital and having them take up a bed. So, send that message to the congressmen. I appreciate that you afford us this opportunity. I would just like someone to explain how this is cutting costs by denying people benefits.

41. Marilyn Keegan, Holbrook. I am calling in response to Congress's attempt to balance the federal budget by cutting Medicare's home health care program. This is positively absurd. We pay taxes all our lives and then if we end up in the position where we need help, you are suggesting we are not able to receive it. My brother-in-law just died. He was bedridden with cancer of the legs along with other cancers. His wife died years ago, he had no children. He positively needed help with home health care and it was minimal. Along with anything friends and neighbors could do, this helped him to live as normal a life as he could. Would it have made more sense to put him in a nursing home and the government would have had to pay that expense rather than the much lesser expense of home health care. What Congress is proposing in the face of making these kinds of cuts is both inhumane and unnecessary. Many of these infirm and elderly have fought for their country and served their fellow man in many capacities. How can we turn our backs on them when they are in need. Please do not stop Medicare's home health care program. It is a real necessity.

42. Ruth Spiegel, Holbrook. My mother lives with me, she is 87 years old and handicapped. She's diabetic, she can't do anything for herself and for several years through Medicare the home health agency was taking care of her. They terminated her March 19 of this year and I would appreciate it if something could be done for her. Her name is Sally Barman.

43. Pam Bernard, Kingston. I'm very concerned about this. I have three elderly people who need this service. One is 95, one is 91. They've been cut back to five days, then to three days, then no days. Some of these people can't afford to have private duty care come in. Very concerned about it.

44. Mrs. Robert C. Wright, Hingham. I think it's unconscionable what Congress has done to cut Medicare to the bone. They just cut \$17 billion more out, gave millions of dollars more than was asked for the road and bridge construction bill and they're balancing the budget on the backs of the poor and elderly and people who really need help. They will take care of other countries in all directions but don't take care of their own. I think something has got to be done about this because people are suffering.

Mr. MENENDEZ. Mr. Speaker, I want to thank Congressman MCGOVERN for reserving time this evening to afford us an opportunity to discuss a critical situation for many of our states' home health agencies.

As we all know, last year's Balanced Budget Amendment contained language which would move Medicare home health payments to a prospective payment system, effective October 1, 1999. Until that date an Interim Payment System (IPS) for the home health agencies was to be put into place.

Unfortunately, the formula which has been approved to implement this IPS has unfairly penalized those states, like New Jersey, who have been prudent with their funds. New Jersey ranks fourth nationwide in terms of visits per beneficiary, averaging just 43 visits per person, compared to the national average of 73.9 visits per person.

New Jersey's home health agencies provide support services for over 50,000 patients and

families each year. The new iPS implemented by HCFA will cut Medicare reimbursement to most agencies in New Jersey anywhere from \$500,000 to several million dollars per agency in 1998 alone. Cumulatively, Medicare home health payments to New Jersey's agencies in 1998 will be over \$25 million less than in 1997. For patients in New Jersey, cuts of this magnitude will mean they will receive fewer visits.

Mr. Speaker, who are these patients who will suffer because of this formula? According to the Institute for Health Care Research and Policy at Georgetown University, home health patients are more likely to report fair or poor health. Twenty-five percent of users are 85 years of age or older, and 69% of all users of home health services have incomes below \$15,000. These people are the among the neediest of our neighbors for whom a home health visit may well mean the difference between life and death.

The problem with the current IPS is that it singles out the most efficient providers and subjects them to the deepest cuts. This is neither fair nor prudent. Where is the equity in asking responsible agencies to accept deeper cuts than those states whose home health agencies have billed Medicare for more dollars? What is the sense in driving fiscally responsible home health agencies out of the provider market because of these inequitable cuts?

There are several bills which have been introduced to correct the IPS formula. I am a cosponsor of H.R. 3657, introduced by my colleague from New Jersey. The Medicare Home Health Equity Act of 1998 would level the playing field and recognize—not penalize—those home health agencies which have been prudent in their use of Medicare dollars.

We need to address this problem now. Many of our home health agencies are in critical condition while they wait and hope that Congress will treat them fairly. The agencies in my state are not asking for preferential treatment; they are merely asking for fairness.

Again, I thank the gentleman from Massachusetts for taking time tonight to focus attention on this very important issue.

Mr. FROST. Mr. Speaker, I rise to express my strong concern with the current situation of home health care agencies across the country, and particularly of those in the State of Texas. Last summer Congress passed the Balanced Budget Act of 1997 and in doing so reduced Medicare payments to home health agencies. While the intent was to curb waste and abuse within the home health industry, it has now become quite clear that the BBA is negatively affecting thousands of home health agencies and those who use their services.

I have serious concerns that these provisions affecting payment to home health agencies will force hundreds of agencies in the State of Texas out of business and thereby forcing patients into nursing homes and hospitals. It was reported in the Forth Worth Star Telegram on June 23, 1998 that half of Texas' home health care agencies will soon be filing bankruptcy. It is imperative that Congress fix the problem with the home health care payment system, before this story in a newspaper becomes a reality.

H.R. 3205, a bill introduced by my colleague from Massachusetts, Mr. MCGOVERN, will fix part of the problem by delaying the implementation of the interim payment system for home

health agencies. I support this bill, and urge my colleagues to work for its passage.

The Texas Association for Home Care informed my office that in one day alone, twenty agencies reported to them that they were going out of business. This needs to stop. Congress needs to find solutions to the problems it created for this industry and for the thousands of people it serves.

Mr. MANTON. Mr. Speaker, I rise to voice my support for improving the already high quality home health care services for Medicare beneficiaries. I thank my colleague, Congressman MCGOVERN, for organizing this important and timely Special Order to address the need to fix a major formula issue for the home health care industry and those who rely on its services.

The Balanced Budget Act of 1997, signed into law last year, moved Medicare's home health benefit package payment system to a prospective payment system (PPS). Although this system has worked well in the past for hospitals, it has not yet been implemented into the home health care industry, in turn, an interim payment system (IPS) was put into play until the PPS was ready. The IPS formula has since created problems for home health care providers and patients by unfairly burdening and penalizing home health businesses who are most cost effective.

The impact this situation will have on home health in New York is astounding. Because providers in New York are currently having their 1998 reimbursements based on 1993 experience, it will be a tremendous blow to the services the New York home health care industry has delivered so well to its patients in the past. Should the IPS continue, New York home care providers would see a \$130 million reduction in 1998 reimbursements.

To remedy this unfortunate situation, a number of pieces of legislation have been introduced, including H.R. 3651 and H.R. 3567. Introduced by my good friend and colleague, Congressman ENGEL, H.R. 3651, The Medicare Home Health Agency Efficiency Act of 1998 proposes to change the existing formula and make adjustments to the IPS which would treat efficient agencies more fairly. In addition, H.R. 3567, The Medicare Home Health Equity Act of 1998, introduced by congressman MCGOVERN, would help reinstate equitable reimbursements and allow home care agencies to make a less rocky transition the PPS.

Mr. Speaker, the Balanced Budget Act of 1997 did a fantastic job addressing the waste and abuse within the home health care industry. I encourage my colleagues in joining me by taking one more step in improving the quality services the home health care industry has provided for so many Medicare beneficiaries by cosponsoring these vital pieces of legislation.

Too many individuals rely on home health care for their livelihood. It would be devastating to both the home health care industry, the patients they serve, if the number of home care businesses continue to be unfairly burdened through the Interim Payment System contained in the Balanced Budget Act of 1997.

Once again, I would like to thank Congressman MCGOVERN and my other colleagues who have gone to great lengths to guarantee the Medicare beneficiaries of our nation receive the quality, affordable home health care services they deserve.

Mr. MCGOVERN. Mr. Speaker, I submit the following letter:

U.S. HOUSE OF REPRESENTATIVES,
CONGRESS OF THE UNITED STATES,
Washington, DC, May 20, 1998.

Hon. NEWT GINGRICH,

Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR SPEAKER GINGRICH: With the support of the administration, Congress worked to pass the Balanced Budget Act of 1997 (BBA) last summer and in doing so reduced Medicare payments to home health providers across the nation by over \$16 billion. The expressed intent of these cuts was to curb waste and abuse within the home health industry. Sadly, it is now clear that the provisions in the Balanced Budget Act do not end such abuse, and actually punish non-wasteful home health providers across the nation. Because of a funding formula buried in the BBA, previously efficient and waste-free providers have been given a Medicare spending "cap" that is below financially manageable levels, and, as a result, many agencies in Massachusetts are facing insolvency.

One of the many examples of this phenomenon is Massachusetts Easter Seals, which has provided quality home health care to disabled citizens in my state for over fifteen years. In Massachusetts, Easter Seals is an acknowledged leader in devising and efficiently implementing coordinated treatment plans for people with disabilities and complex medical conditions. In fact, when audited by Operation Trust in 1997, Easter Seals, like most home health providers in Massachusetts, passed with flying colors.

Massachusetts Easter Seals will no longer offer home health services because of the Balanced Budget Act of 1997. Faced with a projected deficit in excess of one million dollars, the Board of Directors has chosen to exit home health care as of August 31, 1998. This means that over 500 individuals, the majority of whom have disabilities or chronic medical conditions, will be forced to seek care elsewhere in the Massachusetts home health market—which is already downsizing dramatically. In the future, individuals with disabilities or chronic conditions may well be unable to access appropriate home health services. The net result will be that many Massachusetts citizens will be institutionalized at high personal cost and greater expenditure of public funds.

Pressure to correct these unintended consequences is growing in Congress. At a recent Senate hearing, twelve Senators from both parties gathered to discuss the problems this law created for home health care. They agreed that a "mistake" had been made in the Balanced Budget Act and were prepared to look at ways to solve the crisis. I have called for a hearing in the House of Representatives, and on February 12, 1998, I introduced a bipartisan bill, H.R. 3205, "The IPS Technical Correction Act of 1998." This bill, which would ease the crisis in home health, currently has over 40 cosponsors from both parties. Senators Kennedy and Jeffords introduced the Senate companion, S. 1643, and support is growing in the Senate as well.

I would like to request that you include H.R. 3205 for the House Calendar on technical corrections day. Seniors, the disabled, and the medically complex individuals in our nation are paying for this poorly-drafted provision to cut waste and abuse in the home care industry. I support ending abuse and pledge to work with you toward this goal, but patients should never be the ones to suffer from such attempts. I look forward to working with you to provide needed and efficient home health care to our nation, and I thank you in advance for your attention to my request.

Sincerely,

JAMES P. MCGOVERN,
Member of Congress.

CONSTITUENTS' CONCERNS

The SPEAKER pro tempore (Mr. MCINNIS). Under the Speaker's announced policy of January 7, 1997, the gentleman from Colorado (Mr. BOB SCHAFFER) is recognized for 60 minutes as the designee of the majority leader.

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, first of all tonight, Wednesday night, is one of the nights that is a traditional night for the freshman class on the Republican side to take to the floor.

I, being the President of the class, reserve the hour for Members, so I would like to extend an invitation to anyone who might be monitoring tonight's proceedings, whether you are Republican freshman or any other member of the conference, to come on down if you have any items you would care to discuss tonight and any issues that you would care to raise this evening.

The invitation is open for at least another hour.

Let me say though tonight one of the things that I intend to speak about and some others who suggested they may be here to join us is the topic of obtaining constituent input from the people that we represent back home. Now many of us travel throughout our districts and hold a number of town meetings, and it was this topic that we were discussing just this afternoon at a freshman meeting.

□ 2145

A couple of my colleagues were discussing some of the comments that they had received at recent town hall meetings, and it kind of occurred to us that many people really do not believe that Members of Congress listen, that Members of Congress are willing to take the time to listen to constituents, to any of the messages that come up at town meetings and other public forums and so on, that they are acted upon. I thought it might be a good idea to discuss how many of those conversations are in fact discussed and carried on in other meetings that we have here, as was the case of the meeting this afternoon.

I hold a number of town meetings throughout my district in Colorado. My district is 21 counties large. It is the entire eastern half of the state, and generally all the Great Plains on the eastern side of Colorado. It is a district that is a little bit larger than the State of Indiana.

In order to cover a lot of territory in that district, we do hold a lot of town meetings. We do hold a lot of gatherings at coffee shops, at restaurants, at city hall meetings, at schools, all kinds much places. Recently I also conducted a wheat tour with the Colorado Association of Wheat Growers, and many of the wheat growers out on the Eastern Plains. The Colorado Wheat Administrative Committee was the other organization that helped organize that event. We went through three different towns on that wheat tour. We went through Kiowa County on the Eastern

Plains, we went through Cheyenne County and we also went through Kit Carson County, looking at wheat farms.

This is a very challenging time right now for wheat growers. One, many of these farms are dry land farms, and their wheat fields are not irrigated, so they are heavily reliant upon suitable weather conditions. It was a pretty good year so far to get the crop planted and to get a good start on this year's wheat crop. The wheat crop looked pretty good. But farmers were concerned about a number of issues.

One is getting enough moisture to put a good finish on the wheat harvest. Even though the crop is expected to be pretty suitable this year, the bigger issue is wheat prices. Right now farmers are looking at \$2.40, maybe as low as \$2.25, \$2.35 a bushel on wheat costs. There is an estimated 40 percent carry-over in wheat surpluses from last year. So the farmers that I spoke with were concerned about making sure that Congress put sufficient resources into efforts to expand export markets overseas.

I am delighted to say that as a result of those conversations and the message I was able to convey, along with many of my other colleagues from wheat producing states to the Committee on Agriculture and Committee on Appropriations, that earlier today we were successful in putting sufficient funding into the export enhancement program and other export-related programs that help our farmers expand markets overseas.

The real problem, however, has been that the Clinton Administration has not been aggressive, I should say, has not been aggressive at all in fighting hard for our farmers overseas and trying to expand markets where opportunities exist. In fact, because of many official policies of the administration, wheat producers are shut out of about 11 percent of the export markets in other countries, and they are thinking about that pretty frequently these days as they are looking at low wheat prices and willing purchasers throughout the world that we just need to reach.

What I want to share with those folks that I met on that particular tour and that particular series of town meetings is that I did listen, and there are many other of my colleagues here in Congress that have heard similar pleas from the other farmers and growers throughout the rest of the West and the rest of the country who have joined me and been fighting very hard here in Congress to expand export markets and trying to increase the prices of commodities, and to do this within the context of a thriving free market.

I also do a number of other types of visits. I do a number of radio call-in shows throughout my district. Again, being a rural district, many of the people on the Eastern Plains of Colorado listen routinely to talk radio shows. They get a lot of information over the

radio, spend a lot of time in their farm vehicles or traveling the great distances they have to go to get from one town to another, so call-in shows on radio stations is a great way to reach people, and I received several comments about that.

People have brought up the topics of Social Security. They wanted to see their Congress find some way to try to rescue the Social Security System, and particularly address the declining returns that we have realized in the Social Security Trust Fund.

They always seem to bring up the issue of tax policy and trying to find ways to reduce the effective tax rates on the American people.

One of the things I also do back home in my district is I publish my home phone number, and do that pretty frequently. A lot of people do call me at home, which is okay. I think when you run for office, that you should not give up your neighbor status by any means. So I take a lot of phone calls at home. A lot of times I am here in Washington, but I take those messages off of the answering service. When I am there, we get to answer the phone and talk to a lot of people at home. So I encourage anyone concerned about issues taking place in Washington and Congress, anyplace at the Federal level, or even at a state or local level, to get hold of those elected officials that you have in fact have hired to represent you in Washington.

Well, one of the other things that I did, Mr. Speaker, just a few months ago, was sent out a public opinion survey with respect to the topic of education in the district. I received, oh, several thousand responses to that public opinion survey. I want to go through some of those today.

I am going to respect the anonymity of those who have written, because, with the exception of a few, these folks did not intend for their names to be mentioned before the whole Congress. But I do know that they feel very passionately about some of these topics that they have written about. I want to share those with the House tonight and with colleagues, and also suggest if others have constituent letters or constituent concerns that they have been hearing from back home, tonight would be a good night to join me on the floor and let folks know we are listening and responding and that we are letting people know back home that we are carrying their message forward for them.

Here is one, again, on this education survey. It says, "We live in Fort Collins and send our children to a private school in Fort Collins." It says, "Public school is not an option for us. I am an attorney here and my husband, a microbiologist. We moved here four years ago from Silver Spring, Maryland. Our children were in private school there as well. I think that it is appalling what the NEA," which is the National Education Association, "the Teachers Union and the Department of Education, have done to public schools.

I saw the article recently regarding the amount of money spent per capita on children in the District of Columbia school system. It absolutely amazing. I can still remember driving to my office at 13th and K," not too far from here, "when we lived there, and see the run-down schools and kids on the street. I appreciate your efforts and the efforts of your staff. We will continue to support you." These are folks from Fort Collins.

Here are some other comments. This one was a particularly interesting one. Again, all these first few are on the topic of education. "Dear Congressman SCHAFFER, I would like to comment on your opinion survey. I would like to see money spent on education concentrated in the following areas. One, classroom basics, especially reading programs at all levels and for all needed learning styles of the individual student. If a student cannot read, they will never be successful. If assistance dollars are continued, 75 percent should be targeted toward the average working poor. It is the middle income taxpayer who supplies the money. They seldom are able to help their own children."

This writer, a woman, goes on to say, the third priority, she strongly supports increases in vocational and technology programs in junior high school and in high school as well as in two year community colleges.

"We are forgetting the constant losses of skilled tradespersons, plumbers, educators, electricians, auto repair, carpenters, seamstresses, et cetera, chefs, appliance repair, et cetera." This person did not excel at penmanship here apparently.

A "good reasonably priced washer repairman is hard to find, but continued support of welfare moms is still in place. Thank you for your time and interest." That is another person from Fort Collins, Colorado.

Here is one individual who sent a ratings list of what tuition costs in private schools in the area, and just wrote a brief note. "Congressman Schaffer, this is what we are paying for our son's schooling. Vouchers would be a great help. For one child to spend an entire year in a private school costs \$2,375." This is in Loveland, Colorado, and this individual makes some other notations as to why it costs almost \$6,000 per pupil at a public school, and it seems reasonable to this writer that individuals ought to be able to have an opportunity to take an education voucher and purchase a high quality education service at a lower cost when it is certainly available.

Here is an interesting one. It says, let's see, "I am retired from the Poudre School District," a school district in my hometown of Fort Collins, the district that my children currently attend.

"I am retired from the Poudre School District with 33 years experience in the classroom. I am not impressed with what goes on in schools today. Of

course, kids can use a computer and do math with a calculator, but those I tutor are lacking in good old multiplication, facts and so on. They don't have the mechanics. Their geography and history is missing. They can fly to Hawaii, but they can't locate it on the globe. I am disturbed when a 9th grader can't write a paragraph, let alone spell the word he uses. The trouble as I, a 90-year-old see it, is teachers today are the generation that were cheated by the system in the first place. So now what can we expect when teachers do not have the old-fashioned foundation I had? It is true, I am a life member of the NEA," again, the National Education Association, or the teachers union.

"I thought the NEA would make me a better teacher. How naive I was. Their periodicals still arrive with little about better teaching methods, but much about teachers' rights, raises and salaries, more benefits, plus reports on cases of fired teachers and their legal problems. I am convinced NEA's money helped a great deal in electing Clinton in 1992. Teachers paid their union dues to elect that man. Thanks for listening. I hope the bill passes."

The bill she was speaking of was a piece of legislation that just came out of the Education Committee today that deals with trying to get more dollars to the classroom, and she makes a notation that too much of our education money is spent on administration.

I would like to let the woman know and others who are of a similar opinion that the House Committee on Education and the Workforce did in fact today act on that very issue, a measure designed to try to direct more of the money that is currently being spent to the classroom.

You see, today anywhere from 40 to 60 percent of the education dollars spent by the Federal Government is estimated to be soaked up by various administrative costs and other bureaucratic expenses associated with the United States Department of Education, sometimes the state administrations in various states, sometimes local communities as well. But we are making a very conscious and very bold effort here in Congress to try to direct those dollars to the classroom.

Unfortunately, Mr. Speaker, this has become a partisan issue. That bill passed primarily with Republican votes. In fact, I am not certain that there was a single Democrat vote for moving more dollars to the classroom. I am hopeful that by the time that measure comes to the floor, that we will see more folks on the left side of the aisle to join us on the Republican side in trying to make sure that the dollars that we spend actually help children and not help increase the comfort level of bureaucrats.

Here is another person who wrote in their opinion survey, it says, "This opinion survey is a great idea." It says, "Get the Federal Government out of our local schools, do away with tenure,

give merit raises and give reviews for teachers regarding the ability to teach."

This person thinks it is important for us to go back to the basics and teach our children skills, not how to feel.

□ 2200

This woman wrote all over the place and in the margins. She said, "We need discipline back in the schools. We are pouring in more money now than ever, and we still have to fork over so much more money just to get kids registered. There is nothing provided, and the kids aren't learning anything. I am sick of the Federal Government running everything as we lose more and more of our freedom."

This is an individual who, just based on some of the other notations here in the column, it is very obvious she has some experience in education. She suggests that she cares very deeply about public education and want to see public schools thrive and succeed, and views the Federal regulations, the Federal mandates and the Federal red tape, as being a particularly burdensome impediment to educational progress.

These comments really do get at, I think, one of the dividing themes that separate the two prevailing camps of political thought with respect to the Federal involvement in public education. There is the side that believes that we ought to liberate schools and focus on the freedom to teach, to begin to treat teachers like real professionals in an environment where the truly great teachers are able to thrive and able to rise to the top, to be able to be paid on a professional basis, and with professional style contracts that reward success, that reward performance, and do away with this whole notion that the worst teacher in the district is paid the same as the best. That happens too often, and in fact is the case in most schools today.

What many of these writers have expressed is a real sense of trying to free up public education at the local level in a way that will guarantee excellence and guarantee success.

It is interesting, we really rally around many areas of our economy. There are many industries here in the United States that are the world's best, that are the world's best because they are competitive, because they define every day new heights with respect to quality. They are able to offer services and products at the lowest costs and with the greatest convenience.

In America we enjoy these attention routinely, and we expect those kinds of attributes because we live in a free market society, where competitiveness is, in the end, something that is of the greatest benefit to consumers. This is something that has been discovered throughout the world and has been proven throughout history, that free markets always work best. They work far better than a centrally controlled economy and a heavily regulated economy.

If we are willing to brag about our financial markets, if we are willing to brag about the goods and services and the manufactured products that are produced right here in the United States, if we are willing to brag about the professional services that exist, whether it is legal services, real estate services, insurance services, if we are willing to brag about these because of the level of competition, because of the high level of quality, the greatest advantages with respect to low costs, and the full amount of convenience, why is it that we are timid about applying these same characteristics to the public education system?

Why is it that we find so many here on the floor of the Congress, the floor of the House, who regard competitive models for education reform as somehow being negative when it comes to reforming public schools?

It does not make a lot of sense. If we cared as much about our schools as we do every other important industry in our country, every other industry that is a model of success, then we would begin to apply some of the most excellent characteristics of competition to education, as well.

We are beginning to see bits and pieces of that reform effort moving across the floor, and today's event in the Committee on Education and the WorkForce was another one of those milestones, being able to pass a bill to the floor that cuts out the education bureaucracy at the Federal level and moves real authority back to the States and to the local level.

Competition is another issue that the next writer writes about. This is on a different topic altogether. This is an individual that I have met down in Lamar, Colorado, a woman who runs a bus plant. There are only two original bus manufacturing facilities in the United States, one in Colorado and I think the other is in California.

From this woman, we extract her fuel taxes every time she hops in a motor vehicle and drives somewhere, take those fuel taxes, send them here to Washington, D.C., and many of those dollars are spent in mass transportation systems throughout the country.

Many of the cities and municipalities who purchase buses have an opportunity to, again, take advantage of the lowest cost, the greatest quality earnings, and the highest level of convenience. But unfortunately, there is an additional advantage to foreign competitors in the American market.

This woman simply wants a level playing field when it comes to competing right here within her own country, the ability to sell buses on fair and equitable terms. Laws apply to her that do not apply to some of other foreign competitors. They do not pay workers' compensation rates, unemployment insurance. They do not pay high taxes, have visits from the OSHA inspectors, the Occupational Safety and Health Administration. Her competitors do

not have the EPA kicking the doors down and coming in and doing spot inspections and driving up the costs of her product.

Yet, when those foreign competitors bring their product across the American line, the costs of that product is far lower than what she is able to provide. What she writes about is simply demanding a level playing field, making sure that American producers are able to do well in the United States and not be faced with unfair competitive advantages for foreigners.

I see the gentleman from Florida is here and joining me, and I am glad that he is here tonight. I yield to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. I thank the gentleman for yielding, Mr. Speaker. I was sitting in my office going through some mail, and as well, I was listening to the gentleman's comments about education. That, of course, is a very important issue for me and the people of my district.

Indeed, it is a personal issue for me, as well. My mother was a schoolteacher, and some of the sentiments the gentleman was were sharing in the letter that he was reading were sentiments that my mother had shared with me; that though she was a member of the NEA when she taught, she thought that the NEA had lost its focus and had moved away from quality education, and simply had become a labor union pursuing the traditional goals of most labor unions, which is higher wages and benefits for their members and job security, and that quality education for children is a side issue for the NEA.

I think some of the things that we have seen going on in Washington, particularly regarding issues like dollars to the classroom, I want to thank the gentleman for his leadership on that issue and the work that he does to promote that issue. I think the people in the gentleman's district should be proud of freshmen like the gentleman, and the gentleman from Pennsylvania (Mr. JOE PITTS), who have been really trying to push that legislation through.

We spent here in Washington, I think we spent over \$30 billion on education, but a disproportionately large amount of it does not end up in the classroom. It does not end up helping the kids. It gets sucked up by bureaucracy. This legislation I think is a piece of legislation that is long overdue, because it directs the dollars away from bureaucracy in Washington and in our State capitals and to the classrooms.

I do not know what the gentleman's experience has been in visiting his schools in his district or talking to his teachers, but my experience has been it is just very, very tight at the classroom level. We have a lot of classroom teachers in my district who use their personal monies, these are their post-tax dollars coming right out of their wallets, to buy things like supplies, papers, and special materials that are not offered by the school district. I really think that is a shame.

Let me furthermore add that the decline in education in the United States and the falloff in performance I think is a great tragedy. It is a testimony to the fact that Washington's involvement in education has not been helpful at all.

Specifically, SAT scores have declined over the past 30 years. Many colleges and universities have had to institute remedial courses, teaching their students the basics of composition and mathematics, arithmetic, because those subjects were not taught in school, and very often it is in the public school systems where the failures are the greatest.

Might I add also that I think one of the greatest tragedies is to see the National Education Association opposing any effort to implement school choice for parents. Specifically, we have tried repeatedly since I have been here in the Congress, and I know the gentleman has taken part in this debate, and I want to thank the gentleman for his help in this, to try to set up a school choice program in the District of Columbia.

There are many people who argue that we in the Federal Government have no role in setting up school choice programs out in the States and at the State level. I think those are legitimate arguments. I am from Florida, and I think what we are doing in Florida should be the responsibility primarily of parents and our county and local officials and the State officials, and the Federal Government should not be involved.

But we have jurisdiction over the District of Columbia. It is very clearly spelled out in the Constitution. To set up a school choice initiative in the District of Columbia to give parents, specifically low-income parents, I am talking about here, the ability to choose a school for their children I think is a very reasonable thing to do.

To see the NEA and to see so many of our colleagues on the Democrat side of the aisle opposing these initiatives year in and year out, I think the last proposal was 2,000 students. If the public school system in the District of Columbia was outstanding, you could perhaps make some legitimate arguments that this is not necessary. But in reality, it is one of the most expensive school districts, something like \$8,000 a student, and yet the dropout rate is sky high. There is an extremely high number of students who cannot perform on basic, remedial testing. The system is failing.

The thing that bothers me the most about this issue is rich people have school choice. I used to practice medicine before I came here to the House, and all my doctor friends exercised school choice. Yes, some of them enrolled their kids in the public system, but some did not. Some enrolled their kids in private and parochial schools.

But it is those very low-income families in the inner cities of many of our

cities in the United States, particularly here in Washington, those low-income families that have no choice, and those are the places where the schools are the worst; and to set up a pilot program, 2,000 students, give these low-income families the ability to choose an educational environment that will better serve their kids, and to see the NEA consistently opposing this, all I can conclude is that it is out of fear.

Because if school choice is not going to work, if the parents are not going to like it in the end and if it is not going to improve academic performance, why will they not let us find out? FDR said, "We have nothing to fear but fear itself." If school choice, a pilot school choice program for the District of Columbia, is so bad, why do they not let us test the hypothesis and see if it will work?

I would assert to the gentleman, my good friend, that the reason they do not want us to test it, it gets right back to what the gentleman was talking about 10 minutes ago, which is, they know it will work. They know if it works, there will be demand for more of it in the city of Washington, and then the city of Milwaukee will be demanding more, where they already have it; and then they will be demanding it in L.A., New York, and Philadelphia. The NEA is afraid of that. They are afraid that it is going to work. That is why they oppose it year in and year out.

Mr. BOB SCHAFFER of Colorado. School choice and a competitive approach to school reform really does threaten the union mentality that the National Education Association has come to represent.

At one time the NEA was a legitimate professional organization that was designed to try to assist teachers and to help them become more professional at their job, to help them to become more proficient, and to provide kind of a continuing education agent for its members.

Over time it really has evolved into a full and complete union. They file taxes as a labor union. They act as a labor union when they get involved in the political process. They act upon this Congress and State legislatures throughout the country on a political basis. Their goal really has become to preserve the status quo to the greatest extent possible, to preserve these union wage scales, where the worst teacher in the district receives the same pay as the best teacher in a district.

Within that context, it is hard to imagine that there are too many teachers who are able to, year after year after year, just bring their own energy and their own enthusiasm to the classroom to rise above that kind of system. Yet, remarkably, many of them do. But it is through a sense of altruism, a sense of compassion for their profession, a sense of real zeal to educate youngsters and realize that these children are the future of the country.

But successful, thriving teachers are not there by design of the system, by

any means. They are only there because of the compassion that they carry with them in the door when they become new teachers.

□ 2215

Hopefully they will be able to hang on to it and sustain it for 4 or 5 or 6 years. Some manage to sustain it longer. But year after year after year, I have heard from teachers. They write letters. When I go to schools, I visit them and they speak to me and they tell me that after 10 or 15 years in a system, it becomes very clear that there are no greater rewards financially, professionally, or organizationally for those teachers who truly thrive.

And, again, my heart goes out and my hat goes off to those teachers who are truly great teachers, because we can find them throughout the country. We can find them in my school district and the school district of the gentleman from Florida, I presume. But I submit they are not there by design. They are there out of the passion for teaching that they bring with them.

We ought to reform schools so that we reward good teachers and treat them like professionals. I love the response I get back home when I say that I think teachers ought to be treated like physicians. They ought to be treated like basketball players and football players, the things that we care about, so that the truly great teachers can become wealthy if they are the best in their industry and craft. They have a huge line of potential customers outside their door who want to get in and receive their services. That teacher ought to be paid a heck of a lot more than the teacher who runs the classroom where people are trying to escape because they are not learning anything or because they are in a dangerous environment.

Yet in today's model, that kind of comparison does not exist. The worst teacher in the district under the NEA's union contract rules are treated exactly the same as the best teacher. That is not a model for success. That is what school choice allows us to get around, treating parents like customers to reform a system that looks more like every other great industry and every other great delivery system in our country.

Mr. WELDON of Florida. Mr. Speaker, if the gentleman would yield, I wanted to comment on the point, which is an excellent one, which is making education more of a free marketplace.

It is amazing that we here in the United States, the Nation that has championed the value of the free market and how the free market has the ability to do a better job than the government, and how the free market has the ability to provide better services than in a socialized system, indeed that was the great battle of the Cold War which was whether a market system built on freedom was better for the

common man, or a command and control, government-run economic system which, of course, was the Soviet, Marxist Leninist model. Yet in the United States, we have relegated education to the government sector exclusively.

Now, as I said earlier, that is not true in that wealthy people can exercise choice and, therefore, there is a limited market. But I am talking about the common working man.

Might I digress to say that I have met a lot of working class families in my district, families that are struggling to make ends meet, who specifically sacrifice personally to send their kids to private or parochial schools.

But one of the big arguments that the NEA and the left has made against school choice, which I think is an argument totally without merit, is that it will destroy public schools. We hear that over and over and over again that Republicans, because we want school choice, want to destroy the public school system.

They are the champions of the public school system and, therefore, their position is right; that school choice should not be allowed.

Well, first of all, I think this is about educating our kids and what is the best educational environment for our kids. I thought the debate was not about preserving a socialized public system run by the government, but about making sure our kids get the best education they need so that they can go on to make sure that the United States continues to be the greatest country in the world and continues to lead the world in science and technology and medicine. It is not preserving this institution because we have gotten used to it.

Now, I would assert that if we have school choice in the United States, that our public schools will survive. Indeed, I think our public schools will get better, because we will have a real competitive marketplace at that point and the public schools will have to compete with the private sector more effectively. They will no longer have a monopoly.

I think that some of the public schools in my district will succeed fabulously. One of the towns in my congressional district, Sebastian, has a brand-new high school with all the latest high-tech facilities and the greatest teachers we could ever find anywhere in the United States are in that high school.

I would wager that if we implemented school choice more broadly across the United States, and if it were implemented in my district, that Sebastian High School, Sebastian River High School would succeed fabulously. A public school. Why? Because I think they will be able to compete.

So let us not argue that implementing school choice is going to destroy public schools. Public schools are not that bad. I mean, to make that argument is almost to admit they are bad.

Now there will be some public schools that will not survive. But those

are the public schools that should not survive. I am reminded of a speech NEWT GINGRICH gave this morning about New York City, about how last year in New York City there were 500 restaurants that closed and went out of business. Sounds ominous. Sounds bad. But there were 1,300 new restaurants that opened.

Now, I would wager that some of those 500 restaurants that closed, closed because they did not serve very good food. Most people would probably say if they should have closed.

So if we institute school choice in America, yes, we will have some public schools that will close. But I would argue that those are the public schools that should close and those are the public schools that should close because they are not educating our kids. That is the core of the argument.

Most public schools in my district, and I would wager that most public schools in the gentleman from Colorado's district, will succeed and thrive and they will be able to be competitive and the people who will benefit from this will not be the people who occupy the NEA headquarters in Washington, D.C. And that is because that is not what this argument is about. It is about our kids and making sure our kids gets the best education.

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, the failures that are exposed through choice, whether it is school choice or the choice of restaurants as in the case of the New York example, does not mean that the opportunity leaves, that there is not an eating establishment at that old restaurant or that the opportunity to learn will leave the neighborhood.

What we mean when we talk about bad schools being exposed and sometimes closing usually means that we have a changeover of management. That the old management is fired and a new team is brought in to try to meet the need of a neighborhood or a community. The need for education certainly does not go away.

As we know in the United States, whenever there is a high need for some service or some commodity, there is an entrepreneur waiting in the wings to fill it and to meet that need or provide that service. I believe that the same is true in education.

We really have not even broken the surface on unleashing the entrepreneurial instincts of teachers in America. They really have been suppressed by this mechanized union mentality that says if a student grows up in neighborhood or lives in neighborhood, that they are assigned to attend school which is in the neighborhood. Or if they move to another neighborhood, that they go to the school that is associated with that neighborhood. That is the model that we have today where nobody chooses, where nobody selects the curriculum they want, the management style they would prefer, or even some of the other ancillary benefits of a particular school site.

But I believe that if we are able to get beyond that, if we are able to allow teachers to compete on a professional basis, that we will see education in this country turn around and thrive like we can not even imagine today.

Again, we have a tremendous need in our Nation for a strong system of quality public education. Appealing to the entrepreneurial instincts of education professionals in my mind is the way to meet that demand. Those demands exist especially in inner city areas and poor neighborhoods where some believe that school choice will leave those children abandoned. I say that is nonsense. I think those are the areas where we will see the greatest challenge and I think we will see some of the best teachers moving into those particular opportunities to serve communities and to teacher.

So I am like the gentleman from Florida, I think those of us who I believe truly have a passion for improving public education, we do not look to the free market as a way to suppress educational growth and educational excellence. We look to free markets as a way to help schools thrive.

Mr. WELDON of Florida. Mr. Speaker, if the gentleman would again yield, I just wanted to add one more point. In talking to a lot of parents in my congressional district who have serious concerns about the quality of education in the United States, one of the big issues that I find comes up more and more is an area where I think a lot of our schools are failing, and that is it is not just in the academics. It is not just in the ABCs, but in the basic fundamentals of character development.

As many people know, we threw that issue out the school house door 30 years ago and we are reaping a lot of the benefits of that, or the negative benefits of that.

There is more to educating a kid than just teaching them how to read and write and to do arithmetic. There is more to being a good citizen. And that is really what it is about. We want to raise up people to be good citizens. We want them to be involved in their communities. We want them to be good parents. We want them to grow up to be hard-working people, people who will succeed in the marketplace.

Our schools, particularly many of our public schools, are failing in that element of education in the area of teaching character and virtue. And at least what I hear from a lot of parents, particularly some of our inner-city communities, is that they want school choice for that reason. They not only want to find a school that will better teach their kids academically, but they also want an educational environment where their kids will be positively influenced as citizens, as individuals, in areas of character and virtue.

That is one of the other big, big reasons why I would like to see a real marketplace. Now, how we go about doing that, we can debate this issue, whether it is through a tax credit or

school voucher or something along those lines. But after all, is not it the people's money anyway?

We tax them, we take their money, property taxes, income taxes, and then we create this government-run system. And in many communities, that government-run system, we take the money from them, we set it up, but it is failing their kids. And the parents are saying I would like to take my money and go elsewhere. The way it works out is only the wealthy people who have the money to go elsewhere can go elsewhere. But many of the working families, poor families, they are locked into schools that are failing their kids.

So I am really happy the gentleman brought up this issue tonight. I think it is a critical issue. I think it is an issue that we as Republicans need to continue to push. Education in my opinion is going to be a more and more critical issue in the years ahead. We are moving from this industrial-based society to this information-based society which is very, very computer dependent. Where knowledge and ideas are going to be critical for success. And how we educate our kids in the areas of science and technology is going to be critical. We need an educational system for the 21st century.

A new age is dawning. We are leaving the 20th century and moving into the 21st century. Do we want to keep this educational system that has served us well up until now, and is not serving us well now, at least in many of our communities? Are we willing to be bold and to be brave and to move ahead and try something new?

So, I thank the gentleman for bringing this issue up and I have been very pleased to be able to join with the gentleman this evening to discuss this issue.

Mr. Speaker, being the son of a schoolteacher, it has always been an issue that has been very dear to me. My mom taught school and, indeed, we were talking about public schools for a while. I am a product of public school education, not only for elementary and secondary school, but as well for college. I went to a public college.

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I think what we are talking about is improving education in America, helping our kids to be smarter, but, as well, helping our schools to be better. The best way to do that, the best way to do that is to create a real bona fide marketplace where we have competition.

Whenever anybody talks about competition in an environment where there is no competition, those who have the monopoly will always scream and yell and say no, no, no, we do not want that competition. It is going to hurt the system. It is going to make things worse.

I would assert that the fear of change is all we are seeing there. We need to harken back to the words of FDR: "We have nothing to fear but fear itself." If

we are willing to make the changes necessary, we can see that we have an educational system that will carry our Nation boldly into the 21st Century so that we can continue to lead the world in the future.

I want to thank the gentleman for joining him in this special order. It has really been a pleasure for me to be here with him.

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, I thank the gentleman for joining me. My parents are teachers as well, retired. My father spent his whole career teaching in the Cincinnati public school system. My mother, as well, finished her career working in the Cincinnati public school system.

This issue tonight was raised because of the volume of letters. I just grabbed the six or seven that were on the top of the pile before I headed over here today. I did not really check to see what was in them. It was remarkable how similar they are in their criticism. But these letters are also long on suggestions as well, opportunities for improvement, commendations, too.

There are plenty of teachers who view themselves as professionals, who communicate with me, with the gentleman, and with other Members of the Congress; and I encourage them to continue to do more of the same. I am confident in saying that they are not well represented, professional teachers, that is, not well represented by this teachers union that we mentioned earlier.

The interests of the union are very, very different than the motivations of real professional teachers who care about children. This union is a large insurance conglomerate, for example. They profit handsomely from selling professional liability insurance policies to teachers. That is the reason many teachers joined the national union in the first place.

This particular union has the ability to offer a product that is lower in cost because of the volume in which they deal. So they offer low-cost professional liability insurance. Many teachers believe that they need to purchase that insurance from the union in order to teach in a classroom. That is not really the case.

I find that, just walking classroom to classroom in public schools in my district, as I frequently do, or when teachers show up at my town meetings, or there are several that live in my neighborhood as well, when they stop by, their attitudes and opinions and beliefs about where we need to go with education reform is very different than the union.

I ask them, well, why are you sending your money to Washington, D.C.? It is something like \$400 a year or something along those lines just for the Federal dues. That is not even the local regiment of this national union that exists at the State and local level. You pay additional dues for those folks.

I ask them why they pay, why they keep forking over all the hundreds of dollars every year, which amounts to

billions of dollars on a national level. Why do they keep sending their cash that way? They frequently say it is because of the professional liability insurance, but they do not really believe all that nonsense the union perpetuates out of Washington and tries to move forward.

But it really does matter, because this union is very powerful and persuasive here in the halls of Congress. They hand out millions of dollars in cash at campaign time for elected officials and candidates who wish to preserve the status quo and maintain that union model on the union's terms.

The unions do not like people like the gentleman and I who speak about free market approaches to public schooling, because it really does show the difference in fundamental beliefs on what education ought to be about nationally.

There are those on the union side that believe that we measure fairness by the relationship between one school building and another school building or maybe one school district and another school district or maybe even one State school system and another State school system.

But the gentleman and I and those who gravitate toward the free market have a very different belief, and that is that we measure fairness and education on the relationship between individual children.

We believe that wealthy children in America ought to have full opportunity to a great education. But poor children ought to also have that same opportunity. That is what school choice is all about. Whether it is vouchers or charter schools or tuition tax credits or school choice or all of the different mechanisms that we have explored and proposed and discussed are about is moving us in that direction of trying to provide broader opportunity, more liberal opportunity with respect to choice to all children, whether they are wealthy, whether they are poor, whether they live in a nice neighborhood, whether they live in a poor neighborhood. No matter what part of the country they happen to live in, we fundamentally believe that we, that they will have greater opportunity at a lower cost and higher quality by eliminating the waste when we move to a free market approach to education.

When we do that, we have a provider, a professional teacher who provides a service to a legitimate purchaser, somebody with purchasing power that is empowered by cutting bureaucracy and red tape.

When we can restore that relationship between provider and recipient and make that bond stronger, that is the way that we can allow educational services to be delivered more succinctly, more directly, with fewer impediments and intrusions from bureaucracies and so on.

This really is a debate about fairness and a debate about whether we want to see all children in America thrive and

enjoy a higher quality education at the same right.

Mr. WELDON of Florida. Mr. Speaker, will the gentleman yield?

Mr. BOB SCHAFFER of Colorado. I yield to the gentleman from Florida.

Mr. WELDON of Florida. Mr. Speaker, I certainly agree with everything the gentleman is saying. It is also a debate about empowering parents. I believe and I trust the gentleman believes the same way, that the person who is most concerned about the child and the child's education is the mom and dad.

It is not necessarily the bureaucracy here in Washington or the Members of this body or the National Education Association president located in Washington, D.C., but it is actually the mom and dad.

When you empower parents to be able to select an educational environment that is best for their kids, they will do that. I trust moms and dads to select the best education for their kids.

I think a certain amount of the opposition that comes from the left on this issue, this critical issue of school choice, is a lack of trust of parents. Do we trust the moms and dads of America to select the best educational environment for their children or do we not.

I would assert that, if we could overcome the obstacles of the education bureaucrats and the National Education Association and the left wing elements within the Congress of the United States and we could just learn to trust parents and give parents the power, the ability to select an educational environment for their kids that is best for them, they will do so. Academic performance will improve. SAT scores will go up because kids will be in a better academic environment.

As I said earlier, the place where this is most critical is in our poor communities. The place where it is most critical is in many of our minority communities. The place where it is most critical is in many of our inner city communities.

I dare say that, many of the communities that people like the gentleman and I represent, the public schools are good. But there are many communities in the United States where the public schools are failing, and they are failing miserably.

There are some people who would argue that they need more money. We have been hearing that for many years. But one of the most amazing facts is that the amount of money that goes into these schools correlates poorly with the quality of educational performance of the students.

Indeed, there is a considerable amount of data that some of the most poorly funded schools in the United States frequently have some of the best academic performance. Specifically what I am talking about is I have seen data out of places like South Dakota where I think they are one of the lowest levels of the Nation, but academic performance is extremely high.

Mr. BOB SCHAFFER of Colorado. Utah is another State.

Mr. WELDON of Florida. Utah as well. So it is not money. Of course, then, we can always just point to Washington, D.C. and the simple fact that it is one of the highest in the Nation, \$8,000 a student. It has some of the worst schools with some of the worst academic performance that we can find anywhere in the United States.

It is not an issue of money. I reiterate, I come back to this essential point that we are debating or discussing here tonight, we are both on the same side of this debate, which is that if we can give parents that ability, and if the opposition will stop fighting this and it will allow us to try to test this hypothesis, I believe it will work very successfully.

Again, I want to thank the gentleman for bringing this issue up tonight. It is a critical issue. It is a very, very important issue.

There are lots of indicators out there that, in the United States, our kids are not able to compete as well as they should. We used to lead the world in education. Our kids were coming out of school the best educated in the world.

One of the interesting facts in all of this is that, at the college level, we continue to lead the world. At the university level, we are leading the world. But at the college and university level, we have a marketplace. We have choice. Everybody knows that.

Once you get to that stage in life, you select the environment you want and the place where you want your kids to go to school. But up until that point, for many parents, they are locked into a public system frequently because of financial issues.

So lo and behold where you have the marketplace in a higher education, we lead the world. I say if we can get a marketplace at the K through 12 level, we will again lead the world in education, and all of America will benefit for that. I believe the world will benefit for that because, when America leads, the whole world prospers.

Mr. BOB SCHAFFER of Colorado. Very well said. I appreciate the gentleman from Florida joining me tonight.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. DINGELL (at the request of Mr. GEPHARDT) for Wednesday, June 24 and Thursday, June 25, 1998, on account of official business.

Mr. DOYLE (at the request of Mr. GEPHARDT) for Wednesday, June 24 until 5:00 p.m. on account of a death in the family.

Ms. SLAUGHTER (at the request of Mr. GEPHARDT) for today before 6:30 p.m. on account of district business.

Mr. YATES (at the request of Mr. GEPHARDT) for after 7:00 p.m. on Wednesday, June 24, 1998, on account of medical reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MCGOVERN) to revise and extend their remarks and include extraneous material:)

Mr. CONYERS, for 5 minutes, today.
Ms. NORTON, for 5 minutes, today.
Mr. RUSH, for 5 minutes, today.
Mr. UNDERWOOD, for 5 minutes, today.
Mr. PALLONE, for 5 minutes, today.
Ms. HOOLEY OF OREGON, for 5 minutes, today.

(The following Members (at the request of Mr. MCINNIS) to revise and extend their remarks and include extraneous material:)

Mr. GUTKNECHT, for 5 minutes, today and on June 25.
Mr. MORAN OF KANSAS, for 5 minutes, today.

Mrs. MYRICK, for 5 minutes, on June 25.

Mr. PITTS, for 5 minutes, on June 25.
Mr. MCINNIS, for 5 minutes, today.
Mr. SANFORD, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FOX of Pennsylvania, for 5 minutes, today.

EXTENSION OF REMARKS

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

Mr. CONYERS, and to include therein extraneous material, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost \$2,380.

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

Mr. TOWNS.
Mr. KIND.
Ms. NORTON.
Mr. KLINK.
Mr. TIERNEY.
Mr. HAMILTON.
Mr. KANJORSKI.
Mr. HOYER.
Mr. KLECZKA.
Mr. SERRANO.
Mr. VISCLOSKY.
Ms. LOFGREN.
Mr. STOKES.
Mr. BAESLER.
Mr. FARR of California.
Mr. PAYNE.
Mr. STARK.
Mr. BENTSEN.

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

Mr. SOUDER.
Mr. BUNNING.
Mr. LEWIS of California.
Mr. PAUL.
Mr. OXLEY.
Mr. SMITH of Michigan.
Mr. RIGGS.

Mr. GALLEGLY.
Mr. TAYLOR of North Carolina.
Ms. DUNN.
Mr. CAMP.

(The following Members (at the request of Mr. BOB SCHAFFER of Colorado) and to include extraneous material:)

Mr. POMEROY.
Mr. MCINNIS.
Mr. BARCIA.
Mr. CONYERS.
Mr. GILLMOR.
Mr. WHITFIELD.
Mr. REDMOND.
Mr. GUTIERREZ.
Mr. MCGOVERN.
Mr. GOODLATTE.
Mr. WELDON of Florida.
Mr. ENGEL.
Ms. VELÁZQUEZ.
Mr. PACKARD.
Mr. COOK.

ADJOURNMENT

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 41 minutes p.m.), the House adjourned until tomorrow, Thursday, June 25, 1998, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

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

9804. A letter from the Deputy Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Minimum Financial Requirements for Futures Commission Merchants [17 CFR Part 1] received June 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9805. A letter from the Deputy Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Final Rulemaking Permitting Futures-Style Margining of Commodity Options [17 CFR Parts 1 and 33] received June 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9806. A letter from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting the Department's final rule—Apricots Grown in Designated Counties in Washington; Revision in Container Regulations [Docket No. FV98-922-1 IFR] received June 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9807. A letter from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting the Department's final rule—Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Decreased Assessment Rate [Docket No. FV98-958-1 FR] received June 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9808. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Fludioxonil; Pesticide Tolerances for Emergency Exemptions [OPP-300676; FRL-5797-5] (RIN: 2070-AB78) received June 18, 1998, pursuant to 5

U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9809. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Hydrogen Peroxide; Exemption From the Requirement of a Tolerance; Correction [OPP-300655A; FRL-5797-4] (RIN: 2070-AB78) received June 18, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9810. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Peroxyacetic Acid; Exemption From the Requirement of a Tolerance; Correction [OPP-300654A; FRL-5797-3] (RIN: 2070-AB78) received June 18, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9811. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Recodification of Certain Tolerance Regulations [OPP-300627; FRL-5777-7] (RIN: 2070-AB78) received June 18, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9812. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide [OPP-300675; FRL 5796-9] (RIN: 2070-AB78) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9813. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Recodification of Certain Tolerance Regulations [OPP-300638; FRL-5783-6] (RIN: 2070-AB78) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9814. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Buprofezin; Extension of Tolerances for Emergency Exemptions [OPP-300667; FRL-5794-7] (RIN: 2070-AB78) received June 17, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9815. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Reporting Requirements For Risk/Benefit Information; Amendment and Correction [OPP-60010J; FRL-5792-2] (RIN: 2070-AB50) received June 17, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9816. A letter from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting the Administration's final rule—Assessment and Apportionment of Administrative Expenses; Technical Change (RIN: 3052-AB83) received June 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9817. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to Fiji, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

9818. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to the People's Republic of China, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

9819. A letter from the Director, Office of Regulatory Management and Information,

Environmental Protection Agency, transmitting the Agency's final rule—Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners [FRL-6114-4] received June 18, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9820. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions for a Transportation Control Measure [GA-035-2-9815a; FRL 6115-1] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9821. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa [IA 048-1048a; FRL-6113-1] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9822. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of State Implementation Plans: Washington; Correcting Amendments [Docket # WA61-7136, WA64-7139; FRL-6110-7] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9823. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District [CA 198-0077] [FRL-6112-5] received June 17, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9824. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers [AD-FRL-6112-7] received June 17, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9825. A letter from the Chairman, Federal Energy Regulatory Commission, transmitting the Commission's final rule—Open Access Same-Time Information System and Standards of Conduct [Docket No. RM95-9-003] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9826. A letter from the Director, Regulations Policy and Management Staff, Office of Policy, Food and Drug Administration, transmitting the Administration's final rule—Labeling of Drugs for Use in Milk-Producing Animals [Docket No. 96N-0007] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

9827. A letter from the Director, Defense Security Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services (Transmittal No. 98-44), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

9828. A letter from the Director, Defense Security Assistance Agency, transmitting notification concerning the Department of the Navy's Proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services (Transmittal No. 98-49), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

9829. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report of political contributions by nominees as chiefs of mission, ambassadors at large, or ministers, and their families, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on International Relations.

9830. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report of political contributions by nominees as chiefs of mission, ambassadors at large, or ministers, and their families, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on International Relations.

9831. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report of political contributions by nominees as chiefs of mission, ambassadors at large, or ministers, and their families, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on International Relations.

9832. A letter from the Secretary of Energy, transmitting the eighteenth Semi-annual Reports to Congress prepared by the Department of Energy (DOE) and the DOE Office of Inspector General, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

9833. A letter from the Director, Office of Sustainable Fisheries, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 [Docket No. 971208297-8054-02; I.D. 061198A] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

9834. A letter from the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Northeastern United States; Final Rule for the Loligo Squid/Butterfish, Scup, Black Sea Bass, and Illex Squid Fisheries; Moratorium Vessel Permit Eligibility [Docket No. 980529141-8141-01; I.D. 052198A] (RIN: 0648-AL34) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

9835. A letter from the Director, Office of Surface Mining Reclamation and Enforcement, transmitting the Office's final rule—Missouri Abandoned Mine Land Reclamation Plan [SPATS No. MO-034-FOR] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

9836. A letter from the Director, Office of Surface Mining Reclamation and Enforcement, transmitting the Office's final rule—Mississippi Regulatory Program [SPATS No. MS-014-FOR] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

9837. A letter from the Director, Office of Surface Mining Reclamation and Enforcement, transmitting the Office's final rule—Virginia Regulatory Program [VA-112-FOR] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

9838. A letter from the Commissioner, Immigration and Naturalization Service, transmitting the Service's final rule—Authorizing Suspension of Employment Authorization Requirements in Emergent Circumstances for Certain F-1 Students [INS No. 1914-98] (RIN: 1115-AF15) received June 12, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

9839. A letter from the Commissioner, Immigration and Naturalization Service, transmitting the Service's final rule—Employment Authorization for Certain F-1 Non-immigrant Students Whose Means of Financial Support Comes From Indonesia, South Korea, Malaysia, Thailand, or the Philippines [INS No. 1911-98] received June 12, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

9840. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model [Docket No. 98-CE-13-AD; Amendment 39-10594; AD 98-13-06] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9841. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Industrie Aeronautique e Meccaniche Model Piaggio P-180 Airplanes [Docket No. 98-CE-21-AD; Amendment 39-10595; AD 98-13-07] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9842. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; British Aerospace Model H.P. 137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes [Docket No. 95-CE-53-AD; Amendment 39-10591; AD 98-13-03] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9843. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Boeing Model 737, 747, 757, 767, and 777 Series Airplanes [Docket No. 98-NM-156-AD; Amendment 39-10600; AD 98-13-12] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9844. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Mitsubishi Heavy Industries Ltd. Model YS-11 and YS-11A Series Airplanes [Docket No. 97-NM-71-AD; Amendment 39-10601; AD 98-13-13] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9845. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; AlliedSignal Inc. (formerly Textron Lycoming) Model T5313B, T5317A, and T53 (Military) Turboshaft Engines [Docket No. 97-ANE-38-AD; Amendment 39-10610; AD 97-21-07 R1] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9846. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Dassault Model Mystere-Falcon 20, Fan Jet Falcon, and Mystere-Falcon 20 Series Airplanes [Docket No. 98-NM-25-AD; Amendment 39-10603; AD 98-13-15] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9847. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; CFM International CFM56-2, -2A, -2B, -3, -3B, and -3C Series TurboFan Engines [Docket No. 97-ANE-46-AD; Amendment 39-10585; AD 98-12-32] (RIN: 2120-AA64) received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9848. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Amendment of Class E Airspace; Daytona Beach, FL [Airspace Docket No. 98-ASO-6] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9849. A letter from the General Counsel, Department of Transportation, transmitting

the Department's final rule—Amendment to Class D Airspace; MacDill AFB, FL [Airspace Docket No. 98-ASO-4] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9850. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Amendment of Class D and Removal of Class E Airspace; Atlanta, GA [Airspace Docket No. 98-ASO-2] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9851. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Weighted Average Interest Rate Update [Notice 98-33] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

9852. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Low-Income Housing Credit [Revenue Ruling 98-31] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

9853. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Treatment of Hybrid Arrangements under Subpart F [Notice 98-35] received June 22, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

9854. A letter from the Chief of Staff, Social Security Administration, transmitting the Commission's final rule—Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Several Body System Listings [Regulations No. 4] (RIN: 0960-AE83) received June 16, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 3830. A bill to provide for the exchange of certain lands within the State of Utah (Rept. 105-598). Referred to the Committee of the Whole House on the State of the Union.

Mr. ARCHER: Committee of Conference. Conference report on H.R. 2676. A bill to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes (Rept. 105-599). Ordered to be printed.

Mr. LIVINGSTON: Committee on Appropriations. Report on the Revised Suballocation of Budget Totals for Fiscal Year 1999 (Rept. 105-600). Referred to the Committee of the Whole House on the State of the Union.

Ms. PRYCE of Ohio: Committee on Rules. House Resolution 489. Resolution providing for consideration of the bill (H.R. 4112) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1999, and for other purposes (Rept. 105-601). Referred to the House Calendar.

Mr. DREIER: Committee on Rules. House Resolution 490. Resolution waiving points of order against the conference report to accompany the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes (Rept. 105-602). Referred to the House Calendar.

Mr. DIAZ-BALART: Committee on Rules. House Resolution 491. Resolution providing

for consideration of a concurrent resolution providing for adjournment of the House and Senate for the Independence Day district work period (Rept. 105-603). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

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

By Mr. WELLER:

H.R. 4123. A bill to provide for pension reform, and for other purposes; to the Committee on Ways and Means.

By Mr. COOK:

H.R. 4124. A bill to promote online commerce and communications, to protect consumers and service providers from the misuse of computer facilities by others sending unsolicited commercial electronic mail over such facilities, and for other purposes; to the Committee on Commerce.

By Mr. GINGRICH (for himself, Mr.

ISTOOK, Mr. BOEHNER, Mr. HEFLEY, Mr. BLILEY, Mr. EVERETT, Mr. COLLINS, Mr. WICKER, Mr. SHAYS, Mr. JENKINS, Mr. WAMP, Mr. LEWIS of Kentucky, Mr. CALVERT, Mr. SHAW, Mr. GALLEGLY, Mr. HERGER, Mr. NETHERCUTT, Mr. CHABOT, Mr. GILCHREST, Mr. BONILLA, Mr. GOSS, Mr. TIAHRT, Mr. UPTON, Mr. THORBERRY, Mr. SKEEN, Mr. HILL, Mr. COOKSEY, Mr. PETERSON of Pennsylvania, Mr. RILEY, Mr. SALMON, Mr. WATKINS, Mr. FOX of Pennsylvania, Mr. SUNUNU, Mr. PORTER, Mr. SENBRENNER, Mr. STUMP, Mr. GILMAN, Mr. HANSEN, Mrs. KELLY, Mr. BUNNING of Kentucky, Mr. ROYCE, Mr. MCCREERY, Mr. BILIRAKIS, Mr. ROGERS, Mr. SMITH of Michigan, Mr. HASTINGS of Washington, Mrs. FOWLER, Mr. CAMP, Mr. BOB SCHAFFER, Ms. DUNN of Washington, Mr. FORBES, Mr. MCINNIS, Mr. DICKEY, Mrs. MYRICK, Mr. MICA, Mr. FRANKS of New Jersey, Mr. FRELINGHUYSEN, Mr. RADANOVICH, Mr. WOLF, Mr. WELDON of Florida, Mr. NORWOOD, Mr. DELAY, Mr. PACKARD, Mr. REDMOND, Mr. METCALF, Mr. HASTERT, Mr. EWING, Mr. PAPPAS, Mr. LATHAM, Mr. HUTCHINSON, Mr. ENGLISH of Pennsylvania, Mr. COBLE, Mr. BARR of Georgia, Mr. SHADEGG, Mr. FOSSELLA, Mr. LEWIS of California, Mr. HAYWORTH, Mr. RYUN, Mr. KOLBE, Mr. MCCOLLUM, Mr. DEAL of Georgia, Mr. SOUDER, Mr. HOEKSTRA, Mr. SNOWBARGER, Mr. EHRLICH, Mr. GILLMOR, Mr. BLUNT, Mr. MANZULLO, Mrs. ROUKEMA, Mr. REGULA, and Mr. RIGGS):

H.R. 4125. A bill to amend the Internal Revenue Code of 1986 to reduce individual capital gains tax rates; to the Committee on Ways and Means.

By Ms. DUNN of Washington:

H.R. 4126. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities; to the Committee on Ways and Means.

By Mr. GALLEGLY (for himself, Mr. ETHERIDGE, Mr. DAVIS of Florida, and Mr. OLVER):

H.R. 4127. A bill to give gifted and talented students the opportunity to develop their capabilities; to the Committee on Education and the Workforce.

By Mr. GOODLATTE:

H.R. 4128. A bill to amend the Soil Conservation and Domestic Allotment Act to ensure that States and local governments can

quickly and safely remove flood debris so as to reduce the risk and severity of subsequent flooding; to the Committee on Agriculture.

By Mr. HASTINGS of Washington (for himself and Mr. DICKS):

H.R. 4129. A bill to transfer administrative jurisdiction over certain parcels of land in the State of Washington from the Secretary of the Interior to the Secretary of Energy and to transfer administrative jurisdiction over certain parcels of land in the State of Washington from the Secretary of Energy to the Secretary of the Interior; to the Committee on Resources, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HEFNER (for himself, Mr. MURTHA, and Mr. GIBBONS):

H.R. 4130. A bill to amend the Generalized System of Preferences program to include unwrought titanium among the list of articles that may not be designated as eligible articles; to the Committee on Ways and Means.

By Ms. LOFGREN:

H.R. 4131. A bill to provide grants to local educational agencies that agree to begin school for secondary students after 9 in the morning; to the Committee on Education and the Workforce.

By Mr. MANZULLO (for himself, Mr. CRANE, Mr. WELLER, and Mr. MATSUI):

H.R. 4132. A bill to amend the Internal Revenue Code of 1986 to allow physicians and dentists to use the cash basis of accounting for income tax purposes; to the Committee on Ways and Means.

By Mr. METCALF:

H.R. 4133. A bill to amend the Impact Aid program to provide for computation of payments to local educational agencies under that program based on eligible federally connected children living in military housing constructed pursuant to limited partnerships with private developers; to the Committee on Education and the Workforce.

By Mrs. THURMAN:

H.R. 4134. A bill to amend the Internal Revenue Code of 1986 to permit year 2000 computer conversion costs to be expensed by small businesses under section 179 and to provide a \$20,000 increase in the limitation under section 179 for such costs; to the Committee on Ways and Means.

By Mr. TOWNS (for himself, Mr. SHAYS, Mr. BARRETT of Wisconsin, Mr. BURTON of Indiana, and Mr. WAXMAN):

H.R. 4135. A bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish a program for the collection of information relating to the use of children and individuals with mental disabilities as subjects in biomedical and behavioral research; to the Committee on Commerce.

By Mr. WISE (for himself, Mr. NEY, Mr. OXLEY, Mr. RAHALL, Mr. MOLLOHAN, Mr. GOODE, Mr. BOUCHER, Mr. BAESLER, Mr. SPRATT, Mr. PICKETT, Mr. BOEHNER, Mr. BACHUS, and Mr. WHITFIELD):

H.R. 4136. A bill to establish provisions regarding a proposed rulemaking under the Clean Air Act with respect to the transport, in the eastern portion of the United States, of ozone pollution and oxides of nitrogen and to amend the Clean Air Act to provide a 2-year period prior to the statutory reclassification of areas that fail to attain the national ambient air quality standard for ozone; to the Committee on Commerce.

By Mr. YOUNG of Alaska:

H.R. 4137. A bill to restore the second amendment rights of all Americans; to the Committee on the Judiciary.

By Mr. LEVIN (for himself, Mr. FOX of Pennsylvania, Ms. KAPTUR, Mr. BOB SCHAFFER, and Ms. SLAUGHTER):

H. Con. Res. 295. Concurrent resolution expressing the sense of Congress that the 65th anniversary of the Ukrainian Famine of 1932-1933 should serve as a reminder of the brutality of the government of the former Soviet Union's repressive policies toward the Ukrainian people; to the Committee on International Relations.

By Ms. LOFGREN:

H. Con. Res. 296. Concurrent resolution expressing the sense of Congress that secondary schools should consider starting school after 9:00 a.m.; to the Committee on Education and the Workforce.

By Mr. FAZIO of California:

H. Res. 492. A resolution designating minority membership on certain standing committees of the House; considered and agreed to.

By Mr. THORNBERRY:

H. Res. 493. A resolution expressing the sense of the House of Representatives that the Secretary of Agriculture should provide timely assistance to Texas farmers and livestock producers who are experiencing worsening drought conditions; to the Committee on Agriculture.

By Mr. UNDERWOOD (for himself, Mr. GINGRICH, Mr. GEPHARDT, Mr. YOUNG of Alaska, Mr. MILLER of California, Mr. ABERCROMBIE, Mr. BECERRA, Mr. BONIOR, Mrs. BONO, Mr. CLAY, Ms. CHRISTIAN-GREEN, Mr. CUNNINGHAM, Mr. DOOLEY of California, Mr. ENGLISH of Pennsylvania, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FROST, Mr. DEFAZIO, Mr. FILNER, Mr. GALLEGLY, Mr. GILCREST, Mr. GILMAN, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLDEN, Mr. KENNEDY of Rhode Island, Mr. LAFALCE, Mr. LANTOS, Ms. JACKSON-LEE, Mr. JONES, Mr. MARKEY, Mr. MATSUI, Mr. MCGOVERN, Mr. MEEHAN, Mrs. MEEK of Florida, Mrs. MINK of Hawaii, Ms. NORTON, Mr. ORTIZ, Mr. PALLONE, Mr. PASTOR, Mr. POMBO, Mr. RADANOVICH, Mr. RANGEL, Mr. ROEMER, Mr. ROMERO-BARCELO, Ms. ROYBAL-ALLARD, Ms. SANCHEZ, Mr. SAXTON, Mr. SERRANO, Mr. SKELTON, Mr. STUMP, and Ms. STABENOW):

H. Res. 494. A resolution expressing the sense of the House of Representatives that the United States has enjoyed the loyalty of the United States citizens of Guam, and that the United States recognizes the centennial anniversary of the Spanish-American War as an opportune time for Congress to reaffirm its commitment to increase self-government consistent with self-determination for the people of Guam; to the Committee on Resources.

ADDITIONAL SPONSORS

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

H.R. 774: Mr. ALLEN.

H.R. 866: Mr. LUTHER.

H.R. 979: Mr. QUINN, Mr. HULSHOF, Mr. HALL of Texas, Mr. SHUSTER, and Mr. EDWARDS.

H.R. 1166: Mr. HEFLEY.

H.R. 1231: Mr. NORWOOD.

H.R. 1320: Mr. PETERSON of Minnesota.

H.R. 1376: Ms. STABENOW and Mr. MEEKS of New York.

H.R. 1382: Mr. CONYERS, Mr. WEYGAND, Mr. ACKERMAN, Mr. HOLDEN, and Mr. GILMAN.

H.R. 1656: Mr. SNYDER.

H.R. 1828: Mr. LUTHER.

H.R. 1831: Mr. LUTHER.

H.R. 2021: Mr. PITTS.

H.R. 2023: Mr. McDERMOTT and Ms. ROYBAL-ALLARD.

H.R. 2250: Mr. BOUCHER.

H.R. 2365: Mr. RANGEL.

H.R. 2524: Mr. MCGOVERN.

H.R. 2544: Mr. SENSENBRENNER, Mr. BROWN of California, Mr. BARCIA of Michigan, Mrs. TAUSCHER, and Mr. COOK.

H.R. 2593: Mr. GORDON and Mr. FORD.

H.R. 2623: Mr. PARKER, Mr. THOMPSON, Mr. WICKER, and Mr. PICKERING.

H.R. 2661: Mr. GOODE, Mr. CALVERT, and Mr. KNOLLENBERG.

H.R. 2821: Mr. SHAYS.

H.R. 2970: Mr. LOBIONDO.

H.R. 2971: Mr. BARCIA of Michigan.

H.R. 2995: Mr. NUSSLE, Mr. MATSUI, Mr. GREEN, Ms. KILPATRICK, Mr. FALEOMAVAEGA, Mr. WAXMAN, and Mr. FATTAH.

H.R. 3050: Mr. ENGEL.

H.R. 3081: Mr. HILLIARD.

H.R. 3125: Mr. HOBSON.

H.R. 3152: Mr. SAM JOHNSON.

H.R. 3262: Mr. DEFAZIO.

H.R. 3511: Mr. BROWN of Ohio, Mr. CRAMER, Mr. CHAMBLISS, Ms. KAPTUR, Mr. PAUL, and Ms. DEGETTE.

H.R. 3514: Mr. TOWNS.

H.R. 3523: Mr. BOSWELL, Mr. SNOWBARGER, Mr. FORD, and Mr. SOLOMON.

H.R. 3555: Mr. MCGOVERN.

H.R. 3567: Mr. FORBES.

H.R. 3605: Mr. BRADY of Pennsylvania and Mr. TRAFICANT.

H.R. 3632: Mr. EWING and Mr. PAPPAS.

H.R. 3636: Mr. PICKETT, Mr. NEAL of Massachusetts, Mr. CALVERT, Mr. TOWNS, Mr. MCGOVERN, Mr. PORTER, Mr. JEFFERSON, Mr. LIPINSKI, and Mr. HINOJOSA.

H.R. 3637: Ms. SANCHEZ, Mr. EDWARDS, Mr. BARRETT of Wisconsin, Ms. ROYBAL-ALLARD, Mrs. THURMAN, and Ms. BROWN of Florida.

H.R. 3795: Mr. HINCHEY.

H.R. 3807: Mrs. CUBIN and Mr. GOODE.

H.R. 3712: Mr. HUTCHINSON.

H.R. 3814: Mr. MCNULTY, Ms. LOFGREN, Mr. EHLERS, Mr. HASTERT, Mr. SCARBOROUGH, Mr. BERMAN, Mr. NADLER, Mr. WELLER, and Mr. LATOURETTE.

H.R. 3828: Mr. BOUCHER, Mr. DOOLEY of California, Mrs. BONO, Mr. PICKERING, and Mr. DAVIS of Illinois.

H.R. 3879: Mr. MCINTOSH, Mr. CALVERT, and Mr. BILBRAY.

H.R. 3888: Mr. EHRLICH.

H.R. 3890: Mr. MENENDEZ, Mr. MARKEY, Mr. TOWNS, Mr. ENGEL, Mr. LANTOS, Mrs. MORELLA, Mr. WAXMAN, and Mr. ABERCROMBIE.

H.R. 3845: Mr. PAPPAS, Mr. MCCOLLUM, Mr. MANZULLO, and Mr. SOUDER.

H.R. 4019: Mr. FALEOMAVAEGA.

H.R. 4022: Mrs. EMERSON.

H.R. 4056: Ms. DUNN of Washington.

H.R. 4070: Mr. ACKERMAN and Mr. MOAKLEY.

H.R. 4078: Ms. MILLENDER-MCDONALD.

H.R. 4086: Ms. NORTON, Ms. KILPATRICK, Ms. CHRISTIAN-GREEN, Mr. HILLIARD, Mr. GREEN, and Ms. WOOLSEY.

H.R. 4093: Ms. KILPATRICK and Ms. ROYBAL-ALLARD.

H.R. 4110: Mr. SMITH of New Jersey, Ms. BROWN of Florida, Mr. BILIRAKIS, Mr. REYES, Mr. EVERETT, Mr. SNYDER, Mr. HAYWORTH, Mr. RODRIGUEZ, and Mrs. CHENOWETH.

H.R. 4120: Mr. FORBES.

H.J. Res. 123: Mr. BUYER, Mr. BALDACCI, Mr. CONDIT, Ms. GRANGER, Mr. KANJORSKI, Mr. RAHALL, Mr. BOEHLERT, Mr. KIND of Wisconsin, and Mr. CLEMENT.

H. Con. Res. 126: Mr. MARKEY, Mr. ADAM SMITH of Washington, Mr. BILBRAY, and Mr. HEFLEY.

H. Con. Res. 249: Mr. SPRATT.
 H. Con. Res. 274: Mr. SERRANO, Mr. SANDLIN, and Mr. WATTS of Oklahoma.
 H. Con. Res. 290: Mr. GILLMOR, Mr. BEREUTER, Mr. SKELTON, Mr. THUNE, Mr. COMBEST, Mr. CANADY of Florida, and Mr. FOLEY.
 H. Con. Res. 292: Mr. CHABOT.
 H. Res. 333: Mr. MALONEY of Connecticut.
 H. Res. 381: Mr. SALMON and Mr. DAVIS of Florida.
 H. Res. 460: Mr. BUROTN of Indiana, Mr. FILNER, Mr. HALL of Ohio, Mr. CUNNINGHAM, Mr. VENTO, Mr. FARR of California, Mr. FROST, and Mrs. KELLY.
 H. Res. 479: Ms. HOOLEY of Oregon and Mr. MILLER of California.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4104

OFFERED BY: MR. HEFLEY

AMENDMENT No. 9: Page 53, beginning on line 23, strike section 409.

H.R. 4104

OFFERED BY: MR. HEFLEY

AMENDMENT No. 10: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. . . None of the funds made available in this Act may be used to implement, administer, or enforce Executive Order 13087 of May 20, 1998 (63 Fed. Reg. 30097).

H.R. 4104

OFFERED BY: MR. TIAHRT

AMENDMENT No. 11: Strike section 516 (relating to coverage under chapter 89 of title 5, United States Code, for contraceptive drugs, devices, and services).